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**TELANG'S**  
**LEGISLATIVE COUNCIL SPEECHES**

**WITH**  
**SIR RAYMOND WEST'S ESSAY**  
**ON HIS LIFE**

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**EDITED, WITH NOTES**

**BY**  
**D. W. PILGAMKER,**

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# PREFACE.

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When an editor undertakes to edit the works of great men he is justly expected to explain his motives for such undertaking and especially when their speeches are offered to the public which having been once listened to and read, they are supposed to be less adapted for reading again ; and unless he fully justifies the utility of their publication, the works have no warrant. It is still more in-cumbent upon the editor to explain his motives when the speeches he proposes to publish are those of eminent natives of India, as the publication of the speeches of Indians is a novel venture, which few have yet undertaken.

There have lived amongst us in India men possessing admirable mental and moral capacities, who by their works have spread wholesome influence upon the people of their times and there still live amongst us men of similar types, but it is a matter for regret that we have not yet, in India, learnt to appreciate their works as people in the west appreciate those of their people. The late Honorable Mr. Justice Telang was one of such remarkable men and the editor of this little volume is perfectly convinced that his works too are remarkable. While Mr. Telang lived he was held in high esteem by the people of India, and his memory is still cherished and will continue to be cherished with solemn love and feelings of admiration.

The chief motives of the editor in compiling the speeches of Mr. Telang are

1—to serve as a best memorial of the best genius of one of the distinguished sons of India

2—to spread among the young people of India that beneficial moderating influence, which Mr. Telang exercised when he was a living figure amongst them by means of diffusing his



thoughts contained in his writings and speeches, and which is so necessary, in the present state of political, social, and religious movements.

3—to present to the public the correct estimate of a man whom His Excellency Lord Harris has frankly called “a great man, a wise judge, a deep read scholar,”—“a power in the Presidency of Bombay while he lived”

4—“To record in definiteness the ideas of a useful career” in order to make them easy & a suitable lesson to the young generation.

The people have however a right to ask a question, Is there anything meritorious in Mr. Telang's utterances and writings that their compiler should be justified in giving them to the public. In the opinion of the editor every one should ask this question to himself and he will receive a prompt answer. The people have acknowledged him as a great man both intellectually and morally. His learning was deep, his reasoning was acute, his energy was remarkable, his love and sympathy for his countrymen was admirable and his zeal for truth was astonishing. The history of Mr. Telang's life when written will show his claims to the gratitude of future generations as one who labored and labored successfully and sincerely, for the political social, moral and intellectual advancement of his people. The people had reposed in him their perfect confidence as an advocate of their cause, and the Government acknowledged him as a sincere and true exponent of the wishes of the people. He was a bridge between the natives of India and the Europeans—a bridge which cemented the European thought with oriental living. But Telang did more than this. While he was in the Council he fought as an earnest reformer on behalf of his country men. His speeches on the Land Revenue Code amendment Bill and the City of Bombay Municipal Bill will testify more than an humble commentary of the editor. In every public movement he took a leading part and showed his zeal for salutary reforms, and his earnest

ness of purpose to a remarkable degree. The moderating influence which he exercised in every movement is still missed by his coworkers. He was also an eminent lawyer and a wise judge and as an advocate of the Forum, his career was successful. In his speeches which are published in this volume, the readers will find plain speaking not of affectation but of sympathy, speaking which is full of sentiment coming from heart as well as head. There is no assumed superiority, no intellectual affectation, but genuine sentiment pure and saintlike.

Besides the speeches Mr. Telang has delivered in the Council Hall, which are published in this volume, there are others of great importance, delivered on the public platform, which it is proposed to publish in a separate volume. The important among them are, his speeches on.

- 1—Ilbert Bill
- 2—Reception of Indian Delegates
- 3—Congress propositions
- 4—University reforms
- 5—Municipal questions
- 6—Social Conference questions
- 7—Civil Courts Bill
- 8—Cotton duties
- 9—Salt tax
- 10—License tax

He has written several essays on literary subjects which gained him European reputation. The important among them are his essays on

- 1—Age of consent Bill
- 2—"Our roads" read in Student's Literary Society
- 3—The life of Shankaracharya
- 4—Local Self Government in Marathi.

- 5—Muktikopanishadha
- 6—Shastra and custom in Marathi
- 7—Archæological Subjects
- 8—Social compromise (Marathi)
- 9—Anandgirîs Shankaracharya.
- 10—Mandlik's Hindu Law.
- 11—Is Ramayana copied from Homer—a reply to Professor Weber.
- 12—Reply to Dr. Loriner on his theory as to Bhagavatgita.
- 13—Gleanings from Maratha Chronicles.
- 14—Freetrade and protection.

He has contributed several learned essays to the journals of the Royal Asiatic Society and the Indian Antiquary and has versified Gita into blank verse and translated into English for Max-Muler's Sacred Books of the East Series, Bhagvatgita along with Sanat-sujatiya and the Anugita and edited Mudrarakshasa and works of Bhartrahari

These it is also proposed to publish separately.

The editor, having felt that he will be doing service to his countrymen if he collected and published Mr. Telang's speeches and writings, which are now lying scattered, has undertaken the work and hopes to receive patronage from the public. To these is attached Sir Raymond West's learned essay on his life, which he has kindly permitted to publish.

D. W. PILGAMKER.





*Mr. Justice Telang.* By Sir RAYMOND WEST,

K.C.I.E., LL.D., M.R.A.S.

No death in India in the present generation has been more universally deplored than that of the Honourable Mr. Justice Kasinath Trimbak Telang. This widespread regret gives us in some sense a measure of his great worth to his country and to learning, of his personal charm, and of the influence he exercised in helping unnumbered disciples to take larger views and lead purer and nobler lives. Amid the manifold activities to which the needs of life and his public spirit led him, his high aims and his passionate desire for the moral elevation of his countrymen gave to his conversation and character a loftiness, a singleness of purpose, and a tender consideration for the weaknesses of others which, combined with his wide range of information and his penetrating intelligence, made his presence almost fascinating to all for whom he lifted the veil of his reserve. It was a reserve consistent with a polished urbanity, and even outside the veil there were ample stores to furnish forth the discussion of all common topics on the accepted lines; but his inner nature was in a great degree that of a meditative Saint enamoured of purity and holiness, and filled with longing aspirations for the progress of mankind, but especially of the Hindus, towards perfection in knowledge, wisdom, and purpose. This central light, softly shining through all his words and works, made men of all classes, Europeans and Asiatics alike, feel at home in his company; all alike felt that there could be no selfseeking or sinister purpose in his serene and purely intellectual view of any subject that arose in conversation. A refined—perhaps somewhat over-refined—sensibility checked in a measure the outflow of his thoughts when conversing with Europeans, whose learning or capacity he respected; but when his shyness was overcome he was copious and clear as a lake-fed river. To his countrymen, and especially his juniors, he was fond of presenting the high speculative views

of morality and of human relations which occupied his own mind so much. In all his utterances there was a tone of sincerity and conviction which won attention and respect even from those who differed from him in opinion.

Such a man, so learned, so candid, gentle, and good-humoured, and with such a fertility of ideas, could not, even apart from his eminence as an advocate, fail to gain a high and honoured place in any society in which he moved. To a large section of his countrymen, Telang became an evangelist; they looked to him for guidance in all the graver occasions of national and social life. His death has left amongst them a sense of loss and loneliness hardly conceivable by the firmer-fibred European. A space in this *Journal* may, it is thought, be most fittingly consecrated to a brief memorial of the life and character and labours of one who thus played so great and beneficial a part as a patriot and an apostle of progress. It is by the work and the example of him and his like that India must be regenerated, and the moral endowments of her children made nobly serviceable for the general welfare of mankind.

Telang was born in 1850 of a family of high respectability, but of no remarkable distinction. His father, still living, was long connected with one of the great mercantile houses of Bombay and handed on to his son the treasure of an unblemished reputation. Of his mother one knows little; the feeling of the Hindus, as of the Greeks, being that a matron's best renown is to be little spoken of. We can but opine that she was gifted by nature with a quite unusual ability and sweetness of disposition, if, as generally happens, her son owed his talents and his tastes chiefly to her. He was in his infancy adopted by his uncle Trimbak, whence his name Kasinath Trimbak Telang, when Trimbak takes the place of Bapu, the name of his father.

Young Kasinath was set to his lessons in good time, and applied himself then, as always, to study with all the patient receptiveness of his race. He ran quickly through the preparatory course in his vernacular Maratha, and after gaining such

prizes as were accessible to a child, he entered on a higher course of study in the Elphinstone High School, then, as now, the principal "English" School at Bombay. Here he made rapid progress, won prizes, and almost leaped from class to class. He showed, even at this early stage, a strong liking for English literature, in which he was to find so much of companionship and happiness all through his life, but this in no way impaired his native interest in the Maratha poetry. It was, indeed, his love of this which first led him to take up Sanskrit as an auxiliary study, but Sanskrit thus taken up was soon found worthy of a complete and profound mastery for its own sake. As a recreation the gifted schoolboy played chess, and, it is said, with remarkable skill. For the strenuous games of the playground, in which English boys delight, he had little or no inclination. By habit, as well as by natural tendency, his nervous energy was turned almost wholly in the direction of intellectual effort. It seemed as if in this he was obeying a command of nature, but probably the withdrawal of nervous sustenance from his growing frame, caused by too much sedentary work, was a main cause of the delicacy from which he suffered later on, and which eventually brought his life to a premature close. He became conscious of the truth in this respect as time went on. He walked a good deal, and his handsome contribution to the gymnasium of Elphinstone College was a practical acknowledgment of the importance he had learned to attach to physical development.

At the age of fourteen he matriculated in the Bombay University, having then already attained such proficiency in Sanskrit that he was able to take it up for examination as his second language. He joined the Elphinstone College still bearing then on its teaching the impress of vigour stamped on it by Sir Alexander Grant. Principal Hughlings was a man, not only of learning, but of great fertility of thought. His society and conversation, always at the service of a promising student afforded young Telang exactly the stimulus and nourishment that he required. His ~~ex~~ursive and synthetic faculty became active and powerful



in full proportion to his ever-growing store of positive knowledge. Perhaps he was put to University work too soon. There is a precocity of the Hindus for which allowance must be made, but even in their case there can very seldom be the ripeness at fourteen or fifteen which fits for effective philosophical study. Telang, however, had such remarkable ability that no mental crudeness was ever observable as the consequence of his early grappling with the problems of thought and scholarship. It was in his physical strength, his capacity to sustain the wear of life, that he suffered, if at all, by assuming, while still a boy, the tasks of manhood.

Mr. Telang took the degree of B.A. of the Bombay University in January, 1868. The liberal breadth of his studies had not perhaps been quite favourable to success in dealing with examination papers, which depends rather on accurate recollection and facility of reproduction within a narrow field, or in particular promising sections of a wide field, than on the general assimilation of a literature, the living reproduction of its spirit, which really constitutes culture. He had, like many other men who have risen to eminence, to content himself with second-class honours, but he gained special prizes and scholarships during his college course; and he was, on all hands, recognized as a youth of quite exceptional promise. He had already, as an undergraduate, entered on the study of law, and he now took up that subject more seriously. Concurrently with this he had to teach Sanskrit for a livelihood, first as an assistant in the Elphinstone High School, and afterwards as a Dakshina fellow in the Elphinstone College. With such various calls on his attention, it is not surprising that, going up for his M.A. degree at the end of 1869, he again came out only in the second class. He however, gained the Bhagvandas Parshotomdas Scholarship by his high attainments in Sanskrit. He had been working so hard at this subject that he had perhaps been unable to master the specific works prescribed in English—Chaucer, Shakespeare, Locke, and Ruskin presented a formidable quadrilateral to the attack of a Hindu youth of nineteen,

even though he were a very Napoleon of scholarship. Telang, simultaneously with his master's degree, took that of LL.B., the examination for which, by itself, was enough to task a strong intellect ; but he was now at that happy stage when, with powers fully developed and interest unsated, a true student revels among the sweets of learning, unbound as yet to any one narrow plot of ground. In order to qualify himself for the position of an advocate of the High Court of Bombay, he entered a barrister's chambers, and, in 1872, he was, after a special examination, admitted to the Bar.

Telang was now fairly launched in his professional career. He entered on it with a reputation for ability which ensured him a fair trial, and in the course of a few months his rise to a high position was almost assured. In virtue of that sympathetic faculty which he possessed in a quite unusual degree, he almost at once acquired the English tone of the Bar, and moved morally and dialectically on a platform absolutely the same as that of his "learned friends" from Europe. In argument he was perhaps, in choosing his major premises, just a little less sagacious at times than an experienced English barrister whose life has been passed in contention, and whose mental powers have gradually all been drawn to that one centre. In cross-examination he wanted the brusque over-powering readiness of a master of that art. He at first dwelt over-much on points of dispute that he might have better left as small triumphs for the opposing counsel, or for the judge. These are the common faults of inexperienced advocacy, and they decreased as he went on. He mastered the facts in his brief, and marshalled them clearly ; and he presented his case with an engaging candour, which won the confidence of the Bench. He was subtle ; sometimes inclined to make out his case by distinctions without a difference ; but it was all fair logical reasoning. There was no attempt to hoodwink or mislead the court, and the observations that fell from the Bench, if not accepted and adopted, were wrestled with in a spirit of perfect good humour, and with that desire to elicit a sound result from the mass of irrelevancies which

makes the English system, at its best, the perfection of forensic debate. The mingling of deference to the Bench with complete independence and tenacity of purpose was as marked in Telang as in any member of the Bar. It was combined with a pleasing voice and a persuasive earnestness, which gave even a poor case some momentary speciousness, but he would not waste time and irritate the judges by obstinate insistence on points about which their minds were made up. It was always felt—whether the thing could at once be seen or not—that whenever he pressed the Court he had a serious and, what he thought, a solid argument to present, which would have to be discussed in the judgment.

In all matters of Hindu Law Telang was, by general acknowledgment, *facile princeps* of the Bombay Bar. His thorough scholarship in Sanskrit enabled him to refer with ease to the original sources, to compare and criticize them. He was, when not retained, as Counsel on several occasions consulted by the Judges as to the right interpretation of those enigmatic texts which having been framed under archaic influences lend themselves with almost equal inexactness to antagonistic applications in the affairs of modern life. He felt very strongly that in Hindu Law, as elsewhere, life implies growth and adaptation. He hailed with warm welcome the principle that custom may ameliorate, as well as fix, even the Hindu Law, and it was refreshing sometimes to hear him arguing for “modernization,” while on the other side an English advocate, to whom the whole Hindu system must have seemed more or less grotesque, contended for the most rigorous construction of some antique rule. He had a sense of humour not quite common amongst his countrymen, and a kindly charity for the wit of the Bench.

With these high qualifications it was natural that Telang's business should steadily increase. After but a few years of practice he felt able to decline the offer of a judicial appointment in the mofussil, yet soon afterwards he accepted a professorship in the Government Law School at Bombay. This involved no change of residence, and, lover of nature as he was, his social interests

centred in Bombay. With all his learning, indeed, the incidents of rustic life and of the revenue administration were a world almost unknown to him at first hand, and he could dwell with surprise occasionally on facts which to others seemed quite of course. That he did not reject office through mere love of gain was shown by his giving up his practice for many months in 1882 in order to serve as a member of the Education Commission of that year. His final minute annexed to the report of the Commission is from some point of view the most valuable of a crushingly voluminous collection. He was then, and throughout his career, an ardent supporter of the cause of education, and especially of the higher education, amongst his countrymen. In this cause he taught and wrote; he delivered lectures, took part in Committees, and spoke and voted on the Corporation and the Legislative Council. He was for many years an active member of the Senate and of the Syndicate of the University of Bombay. The progress of events has necessitated many changes in the curriculum of the University, and many disappointed students and their friends have demanded changes that could not be conceded without mischief. Telang never allowed his sympathies to run away with his intelligence. He consistently supported the course of genuine learning in the University against repeated attacks; and the science of the law, which has still to grow up in India, may have much to owe to his exertions in settling the present curriculum for the degree of L.L.B. When about a year ago he was appointed Vice Chancellor of the University, it was universally acknowledged that the honour was a fitting crown of his long and able services in the cause of his country's resurrection. He was convinced that success in the modern world was to be obtained only by adaptation to the needs of modern life, and wished his fellow Hindus to unite an inner light of divine philosophy drawn from the traditional sources, and generously interpreted, to a mastery of the physical sciences and of the means of material improvement. His own knowledge in the latter department was only that of a man of quick apprehension, whose chief and almost sole recreation was

reading, enjoyed in the longer hours of leisure that a Hindu commands as compared to a European with an almost omnivorous appetite for information; but he sympathized with the efforts of his friends who, at Poona and elsewhere, sought to bring the Marathas into line with modern progress. He admired and seconded Lord Reay's energetic and successful endeavour to establish technical instruction on a practical basis, but his own natural bent was still strong towards literature and philosophy. He was most thoroughly at home amongst scholars, and during many years was a mainstay of the Bombay Branch of the Royal Asiatic Society. He enriched its transactions with acute and learned essays, and took an active part in the management of the Institution, and in the discussions at its meetings.

If these observations appear to digress somewhat from the main current of Telang's life, they do so in virtue of their close connexion with his own chief interests and occupations. He never allowed the scholar, or educationist, or patriot, to be submerged in the lawyer. He found time for manifold public services amid the calls of his profession. Yet continuous work began at length to tell on his delicate constitution, and he accepted with gladness the appointment of a Judge of the High Court, which, not without some technical difficulties, was made to him in 1889 on the death of Mr. Justice Nanabhai Haridas. During his short subsequent career his success on the Bench at last equalled that which he had achieved at the Bar. He showed himself, not only learned and able, but courteous, patient, firm, and diligent. In the field of Hindu Law he, at least, maintained the traditions of the High Court of Bombay, and his judgments will, in time to come, be referred to with no less respect than those of any of his colleagues or contemporaries. During the last year of his life his rapidly declining health, and the exhaustion consequent on a painful operation, must have made his work at times almost a torture. He could not ascend the long flights of stairs leading to his Court without assistance. Still he struggled on bravely until wearied

nature could hold out no longer. He died with calm resignation as he had lived, in simplicity, benevolence, and usefulness.

In 1884 Telang was appointed a member for legislative purposes of the Council at Bombay. In this capacity, which, through successive appointments, he filled for about five years—Telang was an active and effective critic of the measures proposed by the government. Some of these, as the Act for Amending the Land Revenue Code, the Talukdar's Act, and the Hereditary Officer's Act, were of considerable importance. On all occasions he resisted excessive government action and interference with the fair play of individual will under the traditional conditions, but always with an elevation of view and a sense of responsibility, which made his very opposition an ultimate source of strength. His acquaintance with the details of "mofussil" life and administration was somewhat limited, and was more or less coloured by the channels through which it had been obtained, but subject to this, he could face every question in the spirit of a statesman, not of a mere caviller. In the Bombay Municipal Bill of 1898 he was on thoroughly familiar ground. He contributed powerfully to its improvement and to its success. The important enactment by which primary education was made a statutory duty of the Municipality was the fruit of a half-hour's conference in an interval of the debate between a member of the Government on the one hand, and of Telang and the Hon. Mr. Mehta on the other. As a member of the Joint Schools Committee he afterwards had an opportunity of giving effect to the provisions which owed their existence in part at least to his own labours. The Corporation has not as yet by any means risen to the height of the great function assigned to it. In comparison with other public objects education is still starved in the city of Bombay; but the spirit of Telang is alive, and there is a gradual movement towards the improved and wider instruction, which he would have gladly accepted as the worthiest memorial of his life and influence.

In the foregoing rapid sketch of the main outlines of Telang's life, but slight reference has been made to the interplay of interest and influence between him and the various members of the community, who, from time to time, took up as their special care this or that social or political movement by which, as he thought, some progress or elevation of the people might be achieved. In scholarship, in his profession, and in office, his might appear to be a life fully and worthily employed without expenditure of thought and speech on the manifold topics which arise for discussion and controversy amongst a public enjoying complete civil freedom. Yet, to record his speeches, and to describe the occasions of them, would be in a manner to epitomize the political life of Bombay for many years. He did not, indeed, meddle fussily with every small subject that came up for public discussion. He was not troubled with either envy or egotism, or overweening conceit, which it may be feared are sometimes the real though latent sources of much popular eloquence. But when a principle which he thought important was at stake, he was amongst the foremost in asserting it. Thus his maiden speech, delivered in 1872, was one in support of movement for municipal reform in Bombay, to which effect has been given by the great Acts of that year and of 1889. This first appearance at once gained him at twenty-two the position of a leading public speaker. His command of pure and idiomatic English showed both his natural good taste and the soundness of his academical training. His style was framed on the classic writers, and expressed his meaning with admirable force and clearness. It may, indeed be doubted if any native orator has equalled him in lucidity and restraint which is so much more effective than exaggeration and over-embellishment. He seldom or never rose to any great height of passion; reason always ruled his thoughts, and an abounding kindness checked the denunciation of his adversaries, with which men of a lower class are wont to season their appeals to the crowd. A sweet persuasive reasonableness, illumined by a diffused radiance of feeling, characterized his public utterances

from first to last. He could speak very strongly as to measures and proposals, but he did not indulge in abuse of men, or in that confused vehemence which is common in those who have not attained to a clear conception of the bearings of the public question, or their own situation with regard to it. Calmness comes with knowledge to most men, and the turbid steam grows clear as it runs deep; but to some men moderation and balance of thought are a gift of nature; they perceive intuitively that there may be two sides even to a question on which they feel most warmly. They do not rush to the conclusion that a statesman or a Government has cast off all principle, or the common feelings of humanity, in taking some course quite opposed to their own notions of policy or moral right. Telang was one of this happier class. He himself loved to contemplate a subject in all its various aspects, and he had faith in the willingness of men in authority to be moved by argument, and by a feeling of what the people strongly desired, quite apart from any fear of riot or disorder. As against any manifestation of turbulence he was always on the side of strong government. No incitement to a menacing display of physical force ever escaped him, and as a Judge he even crossed a strong native sentiment by desiring a restriction of trial by jury where juries were found-unequal to the duties cast upon them. He led his countrymen by rising superior to them in toleration, largeness of view and in the charity which shrinks from imputing evil. His speeches were in these respects a model which those who would fain take his place and continue his work would do well to study and imitate.

A favourable opportunity for the display of Telang's powers as a political speaker was offered by the introduction, in 1876, of a Bill for transferring the cognizance of disputes in which the fisc was concerned from the Civil Courts to the revenue officers. This was from the political point of view a distinctly retrograde measure, a falling away from English principles and from the generous faith in the judiciary which statesmen like Warren Hastings and Mountstuart Elphinstone had proclaimed and



practised at an earlier time. Public feeling was a good deal roused, and Telang delivered a powerful address to a sympathizing audience against the threatened decline towards a "Droit Administratif" in place of the common subjection of all persons, official and non-official, to the ordinary tribunals. The Bill was carried, in spite of all protests, as Act 10 of 1876. It deprived many persons of a dearly valued right, but they did not belong to the noisy part of the population. The revenue officers have used their immunity from judicial control with moderation, and probably no great harm has arisen beyond a general weakening of the once unbounded confidence in British justice fostered by the submission of the mighty "Sirkar" itself to the decisions of its own tribunals. How great a support to the government is an occasional defeat in the Civil Court is a truth seldom appreciated by executive officers, but evident to all who seek out the strong foundations of British rule and find them in the moral approbation of the Indian people.

Telang shared the general feeling of his countrymen as to the wider opening of the Indian Civil Service to natives, and he set forth his views very effectively at a public meeting in 1873. He looked too much, perhaps to the instance of exclusion, and overlooked too much the vastly greater range of government employment of which natives of India enjoy a virtual monopoly. He did not quite realize the offensiveness of Baboo rule to Sikh or of Parsee rule to a Mahomedan. The rule of India by England implies the employment of Englishmen to some extent in the administration. Good administration requires capable men. The conventioned Civil Service is merely a means of obtaining such men. They have to be ensured definite advantages in return for exile, for a shortened term of existence, and for sacrificing their chances in life at home. These advantages are guaranteed by the constitution of the Civil Service. The reasons for it do not extend to Indians employed in their own country in performing duties which present no special temptations to abuse. These considera-

tions were, however, set aside, or superseded, in the popular laudations of competition; and if mere success in an examination was the sufficient test, giving a right to high employment in tempering despotic government with English principles, the ground taken by educated natives was and is unassailable. Why should a first class scholar at Calcutta or Bombay be shut out from the Service which is open to a second-class scholar in London? Admit the principle, however, that a certain staff of highly qualified Englishmen is a necessary ingredient in the public service of India, and then the competitive system becomes a mere mode of selection amongst Englishmen, affording no ground for abolishing the first condition of fitness. The necessity for the employment of Englishmen in the higher posts ought to diminish, and proportionally it has greatly diminished with the progress of education and of regular government; but the inclusion in the covenanted service of any but British-born subjects ought to be regarded as a privilege and an expensive anomaly. A British civil corps being recognized as indispensable, ought to be recruited from British sources, like a British regiment, and each, as a most costly instrument, ought to be employed as sparingly as possible. That indigenous ability is not deprived of a fair field by the existing system is proved by such cases as that of Telang himself, and the prospects of an LL. B. of the University of Calcutta or Bombay are comparatively much better than those of newly called barrister in England, as well as far more cheaply gained,

When such views as these were urged on Telang in conversation, he admitted the necessity of a select and generally reserved service, but he contended that his people could never be contented with a service from which they were absolutely excluded in favour sometimes of men of inferior worth. The answer was that men must needs be dealt with in classes; but it would greatly mitigate the harshness of the rule of exclusion if individual natives of distinction as public servants, or even of remark-

able promise, were sometimes admitted to the convened Civil Service on special terms, fairly comparable to those enjoyed by the "competition-wallas." This would satisfy native sentiment better than their occasional appointment to "reserved" places at reduced salaries, and without an admitted claim to promotion. To admit men, as has been done, on a promise or understanding, that they become members of a Service and then declare them entitled only to hold particular places at the pleasure of Government could not but provoke angry reclamations and accusations of breach of faith.

Tolrang opposed with great vigour and with real force of reasoning Lord Lytton's reduction in 1879 of the duties on Manchester goods. He had already, in 1877, discussed the question of Free Trade and Protection in an ably argued essay read at the Sassoon Mechanic's Institute. It is not necessary to accept the reasoning in this paper in order to acknowledge its cleverness. Its first proposition, reduced to the simplest form, is that a protective duty ultimately reduces the cost of articles manufactured under its protection. That a special protection or bounty given for a time may be justified as a necessary encouragement to an infant industry has been admitted by economists from Adam Smith downwards, but the cotton manufactures of India were already fully developed in 1877, and had the production in Bombay of fine cloths been really profitable, it would have attained large proportions before 1877. The best justification of the duties on fine cottons was that India could not produce such goods as these, and thus the whole sum paid by purchasers in excess of the lowest necessary cost of manufacture went into the fisc and became available for the public service. If the result of the import duties has been, except quite provisionally, to induce the production of cloth at tenpence a yard which could be imported for sevenpence, India must have lost threepence on every yard thus woven instead of being bought with goods of other kinds produced at a cost of sevenpence. India did not enjoy any special advantage in the production of fine cloths, nor did it suffer under

any disadvantages in the want of capital, enterprise, or skill, which would warrant the artificial fostering of that particular branch of industry at the cost of the body of consumers or tax-payers. That protection will reduce the cost of production so as to bring goods to market at a lower price than non-protection appears as a general principle to be quite erroneous. That it was necessary in the particular case, in order to foster the mill-industry of India, has been disproved by the enormous growth of that industry since the duties were abolished. It has spread into the mofussil, and it has avoided the production of the finer cloths which can be purchased with other commodities produced at a smaller expenditure of capital and labour. The policy of Lord Lytton, adopted and extended by Lord Ripon, was in truth assailable, but on quite other grounds than those chosen by the young orator.

In arguing again the contention of economists that protection involves a pernicious interference of the State with trade and industry, Telang was drawn into a much wider field of discussion than his subject demanded. The question was simply—Can the State, without mischief, interfere with the form of industrial activity to which individuals are drawn by their own tendencies, capacities and circumstances? An affirmative answer leads us straight to communism, and an extinction of the individual enterprise to which social progress owes so much. A negative answer condemns subventions of a particular industry at the general cost, except when it can be seen that the result will be a general benefit. There are such cases, and, as Telang acknowledged, the Indian government had been active in making experiments in aid of private enterprise in many directions. There are even some cases, not precisely those of an infant manufacture, in which protection, by securing a large home market, enables an expensive manufacture to be carried on securely upon a scale which makes numerous improvements of detail possible, and thus leads to a permanent superiority even in cheapness, and to a command of foreign markets. Such instances are quite exceptional, and the general superiority of private intelligence, promoted by private

interest, over governmental direction, cannot be questioned even in India. The proper limits of State action there are wider than in England, but these limits must ever be narrowed as the State succeeds in its purpose of forming a race of higher intelligence and energy, as well as of larger resources and more perfect organization.

It would be impossible to notice all the speeches made by Telang during the period of his full activity, but reference must be made to his powerful address at a meeting called to support the "Ilbert Bill." The reasons for that measure were never so ably presented as in this speech. When we now recall the fury excited by the project, the injudicious flourish with which it was introduced, its "shrinkage" in the Legislative Council, and the rarely disturbed sleep of the Statute in actual practice, we must be driven to recognize once more the extreme difference between expectations and results in matters of legislation.

Treating as he did on so many and such various subjects of controversy and of intense public interest, it was impossible that even a man of extraordinary endowments should not sometimes miss the exact truth. But this may be said with confidence, that Telang showed remarkable sagacity and judgment in taking up his positions that he maintained them with great dialectic skill, and in language of a limpid purity that would have done credit to an English-born orator. He was, in fact, an assiduous student of Bright's speeches and, without rising to majesty, he could infuse into his own addresses on great occasions an earnestness and patriotic fervor clothed in unaffected language not unworthy of the great tribune. No word of enmity or spite, no mean imputation of base motives, ever escaped from his lips. He could address a surging crowd on a proposed Salt Tax, or Licence Tax, without being carried away by his own eloquence from the region of loyalty and moderation. He was, in fact, free from all personal envy or peevishness and, feeling no ill-will, had none to utter. He was deeply grateful, and therefore touching and eloquent, in his farewell panegyric on Lord Ripon. He could rise with the popular feeling,

but he could not sink with it below the level of his own magnanimity. His final public utterances on the Age of Consent Bill were animated by a passion for the elevation of his people, which enabled him to confront without flinching the prejudices and the censures of many of his associates. It may, indeed, be doubtful, whether in his position as a judge, which by this time he had attained, he could properly take part in a political agitation as to which public feeling was so strongly divided. Reticence and self-suppression on such occasions are, as a rule, even more expedient in India than elsewhere, since partiality and partisanship are there most recklessly imputed. But Telang's course was generally approved, and apart from mere policy, was in all ways consonant to his high character, his learning, and his abilities. The subject was one which specially suited him. He had, as a lawyer to deal with the construction of Her Majesty's Proclamation on assuming the direct government of India, which had been invoked as a bar to legislation for protecting child-wives against brutal ill-usage. As a lawyer and scholar both, he had to examine the injunctions of the Shastras and the authority of the commentators. As a patriot of elevated and humane views, he had to oppose by higher and nobler considerations the petty and obstructive objections raised against the proposed reform. In speech and writing alike he showed himself equal to the occasion. He proved that neither the Proclamation nor the Religious Law sanctified a practice revolting to humanity. He could meet one of his most capable opponents with a quotation of himself that "we Marathas do not allow orthodoxy to stand in the way of our political advancement," why then, he inquired, in the way of a necessary step in civilization? He ventured to declare, "Our system is to a great extent become petrified . . . the moral conceptions which once informed it have long since vanished, and . . . we are now hugging the mere outer shell as if that were all in all." "It is the bounden duty of the Legislature," he said, "to do what it is now doing in the interests of humanity and of the worldly interests of the committees committed to its charge, and for such a purpose

as the present to disregard if need be the Hindu Shastras." Again, "If in such a case . . . the British Government is to hold its hand and put forward a plea of *non possumus*, it will write itself down as unworthy of its best traditions, and will announce a principle of action that if logically carried out, will destroy the possibility of any solid good resulting from its presence in India."

These sound and bold declarations from the most capable of Hindus in our generation, have an application extending far beyond their immediate object. Occasions arise from time to time when dormant prejudices are roused to fanaticism by men filled with envy or disordered ambition; some ambiguous words of a Shashtra are interpreted so as to support a charge of interference with religion in the necessary arrangements of peaceful neighbourhood amongst men of hostile creeds; and a bad eminence is gained for a time by the self-seeking guides who thus contrive to inflame class against class. In such cases the British Government must as the native patriot has advised, disdain a plea of *non possumus*. Custom has introduced infinite variations on the written law, and custom has force only as approved by the sovereign will; which may assert itself for the common good, as well directly as thus indirectly. As Telang suggests, the teaching of astronomy must not be given up in deference to the "absurdities of the Hindu Jyotish," nor must the "police regulation of Hindu and Musulman processions" be abandoned as an "interference with religious worship." His liberal views on these points are amply supported by native authority, free from any European influence. "In astronomy," says Bhasker Acharya, "scripture is decisive only when it agrees with demonstration." The same is true of other matters of observation and reasoning, and Misra says, "Civil law is founded on reasoning, not on revelation." There is an element of science in it—a science of social welfare and political necessity or expediency—to which the administrator may properly give effect without any violation of the spirit of the Hindu law. Native rulers have never felt themselves enslaved by texts opposed to

public policy as they conceived it. The 'British Government is tenderly alive to the sensibilities of its subjects, but, even on Hindu principles, is bound to "cut prejudice against the grain" when a higher interest demands it. And the duty in such cases of the leaders of native thought was thus clearly defined by Telang; "I do not object to them telling the government, if they so believe, that the people will be discontented with the government measure. But in so doing they must remember that they are doing only one half of their duty. Their whole duty requires that they should tell their brethren how they misappreciate the motives, the principles, and the actions of government in the matter." Here truly was a leader whose lightest words, breathing a divine air of elevated loyalty, should have sufficed to silence and shame the crowd of obstructionists who would have rejected with a snarling fanaticism an ennobling boon held out to their effete society.

Telang's mental activity took the form of literary composition at a very early period. At nineteen years of age he read an essay to the Students' Literary Society on "Our Road." This was but

"The spirit of the years to come,  
Yearning to mix itself with life."

In 1870 he had begun to feel his true vocation to the pursuits of scholarship. He read an essay on "The Life of Shankaracharya," which embodied the results so far reached of studies which were continued for many years, as evinced by his learned paper on the date of the great philosophic contributed to the *Indian Antiquary* in 1884. In 1871 he gave the Society an essay on the Muktikopanishad. Then fairly entering the public field he in 1872 became a frequent contributor to the *Indian Antiquary*. Essays by him on various subjects of archæology and Sanskrit learning may be found in the volumes for several years afterwards. Particular reference may be made to that in 1876 on Anandgiri's Shankaracharya, and to a review in 1884 of R. S. Visvanath N. Mandlik's book on Hindu Law. The last men-



tioned work has added materially to our means of forming a true comprehension of the Hindu Law as a living system, but it rests on an insufficient collation of the MSS. of the Mayukha; it presents defects of scholarship and doubtful speculations which invited criticism. A really useful discussion of these matters would occupy more space than can be spared here, but Telang's observations may be deemed an almost necessary pendant to the work for the purposes of the lawyer who wishes to stand on sure ground. It is clear from them that in any case of difficulty reference to the original is still as necessary as ever.

Shankaracharya's contention against the nihilist philosophy, his demonstrations of an original eternal self as the basis of all perceptible phenomena, had a great attraction for Telang's spirit. He longed for something solid and everlasting to rest upon, and shuddered at the blank vacuity offered by unaided speculation, almost as Shakespeare at the contemplation of death, which yet he recurs to again and again as under some dread fascination. The Vedantic impress on his mind made him dwell often on those passages in Wordsworth's poetry which speak the language of an imaginative pantheism. What final views in philosophy he had adopted it may not be possible to say; probably he had not arrived at any finality, but remained to the last one of those earnest seekers after truth who thirst in vain for a knowledge and a communion with the infinite, which can be gained only from revelation. He, however, was not able to accept the message of Christianity, and the same highly sensitive and sympathetic nature which made him long for a divine hand to be held out to him in the darkness that lies beyond human reasoning bound him by ties he could not violently break to the family and friends who were so dear to him, and to the conventional practices which this union exacted.

In 1872 Telang, in a paper read to the Students' Literary Society, and afterwards published as a pamphlet, entered the lists against Professor Weber, on the subject of the originality of

the Ramayana and its place in Hindu literature. The contention of Dr. Weber that the source of the Ramayana is to be found in a Buddhistic myth, wrought out in details borrowed in a large measure from Homer, is met first by an argument that the Buddhist story may just as likely have been borrowed from the Ramayana, as have been the original of it. In the second place, that the coincidences, so far as they are really coincidences, are but slight and probably casual. There are, no doubt, archaic notes in the Dasaratha-jataka, such as the Sisterhood of Sita to Rama, which are wanting in the Ramayana. The Ramayana, too, gives incidents of the story which are wholly wanting in the Buddhist revision. The latter ignores the abduction of Sita and the siege of Lanka. Against these indications may be set the condemnation of marriage with a sister already found in the Rig-Veda, so that the Sisterhood of Sita must have been a mere conscious flight of fancy, at any time assignable for the composition of the Dasaratha-jataka. The relation might as well be invented after the publication of the Ramayana, as after the acceptance of the Veda. What appears most likely is that in the Folklore of Northern India several versions of the legend were current, and did not cease to be current through the appropriation of any by Valmiki, or another. The Arthurian legend, the story of Faust and others in modern Europe, furnish parallel examples, and in the Greek drama the more recent play might take up either more or fewer than a previous one of the manifold incidents with which a popular myth had become enriched in circulation. There was for the Brahmanical and for the Buddhist author an ample store to draw upon, and the latter, though subsequent in date, would feel less repugnance than the former to the adoption of certain details which to the former had become specially incongruous. The transfer of the scene of action to the south points, though not, perhaps, decisively, to the comparative lateness of the Dasaratha-jataka, and, as Telang insists, it was in the highest degree improbable that a Buddhist should be adopted as a Brahmanical hero. The Buddhists parting from Brahma-

nism would still carry with them many of the earlier myths and traditions of their race, but the orthodox already amply supplied with legendary materials would be slow indeed to find in a Buddhist hero a subject for adoration and adoption as their own.

The observations of anthropological inquirers, though not dwelt on by Telang, make it quite manifest that such a test as the bending of a bow might well be conceived quite independently amongst different communities. The general use of bow would make strength and skill in using it a necessary topic for poetry almost everywhere. The abduction of women, exile, battles and sieges, offered themselves for imaginative treatment to Valmiki without any need for resorting to the Iliad or the Odyssey. That there was an Homeric poem in Sanskrit might be true; the Ramayana would in a manner justify the assertion; but that there was an Indian translation of Homer as stated by Dio Chrysostom and by Ælim appears wholly erroneous. This is the substance of Telang's second argument; and it may surely be added that the legendary atmosphere, the whole mental tone of the Ramayana, are so different from those of the Homeric poems that no substantial influence of the latter can be traced in the Indian epic.

The other grounds on which Professor Weber relied for the late production of the Ramayana—the geographical and astronomical references and the literary notices of the poem, are handled by Telang with equal fairness and ability. He adds several affirmative indications of more or less strength, which support his own view that the composition of the Ramayana must be referred to a period several centuries before the Christian Era, and before the date assigned as probable by Professor Weber. The theory of the latter has not been generally accepted, and the criticisms of the young Hindu scholar have been confirmed by subsequent investigations both in India and in Europe.

This essay gave Telang an acknowledged and prominent place amongst Sanskrit scholars. This position he maintained and improved by his subsequent work, in spite of the distractions of

increasing professional business, and of various movements, social and political, in which he became interested. In 1874 he contributed four essays to the *Indian Antiquary* and read two learned papers before the Bombay Branch of the Royal Asiatic Society. To the Students' Literary Society he read paper on Loriner's theory as to the Bhagavadgita, which he afterwards embodied in his introduction to a metrical translation of the "Divine Lay." Of this translation itself as a piece of English verse composition little more need be said than that it is a remarkable effort on the part of a foreigner. The subtleties of English prosody had not been mastered even by this accomplished proficient in English prose. As a faithful version the work deserved high praise; but still higher commendation is due to the prose translation printed as volume viii. of the series of Sacred Books of the East, along with the Sanatsujatiya and the Anugita, two other episodes of the Mahabharata. The relation of the three to each other is learnedly and acutely discussed, and each—but especially the Gita—is made to throw a valuable light on the development of Indian speculation. The Bhagavadgita belongs to an age at the close, or soon after the close, of the period in which numerous upanishads were produced, which superadded to the primeval Vedic hymns and the minute ceremonial literature a mass of ingenious but hazy views about the underlying essence of divine and human existence and of attaining final peace and perfection, without as yet any systematic connexion and co-ordination of the several cognate notions. "They are in the true sense of the words guesses at truth, frequently contradicting each other, yet all leading in one direction." Comparing the Gita with the "current Yoga Sutras," Telang points out that in the former there are many directions for the attainment of complete concentration of mind and indifference to mundane objects, but without orderly arrangement carried out to any great length; while in the latter there is an excess of system with definition and distinction carried to a wearisome and bewildering extreme. Important words are used in the Gita in varying senses. Apparently conflicting passages

are left unreconciled, and contradictions of statement as to feeling show the working of a mind still subject to fine impulses of emotion, rather than binding them in the chains of a rigid philosophy.

The style of the Gita, archaic, abounding in repetitions of favourite phrases, supports the theory of its composition after the Upanishads, but before the early literature of Sanskrit. Particular words are used in senses which had become obsolete to the classical writers. Thus the Bhagavadgita stands near the beginning of philosophy conscious that truth must be self-consistent, and striving to make its manifold speculations conform to the test. The tendencies to system were in the intellectual air, and the author of the Gita was touched though not subdued by them. The Sankhya phrases and the apparent reproduction, at least, in part of the Sankhya system in the Bhagavadgita are probably to be accounted for by this that the Sankhya itself, as an ordered synthesis was of slow development. An endeavour to express in words the notions of the successive processes or outgrowths from the primordial Prakriti led to more and more elaborate explanations, to balancings, conciliations and reductions, to consistency and symmetry, which resulted in a system. But the system was as yet but inchoate; the stage of approach to a clear and uniform nomenclature only had been reached at the time when the draughts of the Bhagavadgita were made on the Sankhya reservoir.

How far Indian speculation--not perhaps wholly aware of whither it was going--had advanced at this time of free thought, joined to conventional orthodoxy, is shown by what Telang says of the position of the Gita with respect to the Vedas: "The author of the Gita does not throw the Vedas entirely overboard. He feels and expresses reverence to them, only that reverence is of a somewhat special character. . . . The precepts of the Vedas are suitable to a certain class of people, of a certain intellectual and spiritual status. . . . But if the unwise sticklers for the authority of the Vedas claim anything more for them than

this, then the author of the Gita holds them to be wrong . . . . acting upon the ordinances of the Vedas is an obstacle to the attainment of the *summum bonum*." The Gita regards the Vedas as chiefly, if not solely, ritualistic, and here it echoes the Chandogya Upanishad. "They that follow after illusion enter thick darkness, they that are satisfied with liturgic knowledge a thicker darkness still." A sage is he who knows himself as one with the universal being, and for him there is no ascent or descent by good or evil works. Both alike are to be avoided in the intense ecstatic contemplation of the universal and eternal. Where desires and motives cease the moral quality of actions fails, and thus "the perfect sage . . . . may do good and evil as he chooses and be unstained; such is the efficacy of a knowledge of the self." Thus it is that, putting away all desires and all activities, the meditative devotee rises, the Gita declares, above the Vedas. The Vedas, then, could not have been contemplated as containing the very highest knowledge. The Upanishads had not yet become divine; it is, at least, doubtful whether the Atharva-Veda had as yet been sanctified by antiquity.

From such indications as these, from the pre-eminence assigned to the Sama-Veda, from the view taken of the castes and from a consideration of the natural order of development of religious ideas, Telang arrives at the conclusion that the Gita preceded the preaching of Buddhism. The latter was a thorough-going rejection of the sacred system which the Gita strove to preserve—to preserve at least the soul-subduing associations connected with it—in solution, so to speak, and diffused through its philosophy, Buddhism denying the efficacy of works, wholly disapproved the will-worship of penances. It accepts caste as a condition of mundane existence which can be overcome by purity and charity, so as to open to the lowest, as to the highest, the rest from change, the calm of the state of mind known as Nirvana—release in this life from the trammels of individuality as contrasted with the blending, in the next life, the identity with the universal being of Brahmanical philosophy. The Buddhist con-

ception might very well be a more advanced development from a mass of ideas embodied at an earlier stage in the doctrine of the Bhagavadgita, but it is hard to suppose the latter deduced from the former. An adversary of Buddhism would never concede so much; pronounced antagonism, in fact, afterwards petrified the Brahman creed; a trimmer would have explicitly set forth points of agreement as grounds for compromise, but of this there is no sign.

The external evidences, such as references and quotations, of the age of the Bhagavadgita, point so far as they go to an antiquity such as may be deduced from the internal indications. On the whole the work must have been composed almost exactly as it has come down to us at least three—probably five or six—centuries B. C. Its immense and almost unvarying popularity from that time to this can have arisen only from its special adaptation to the Hindu character, and every passage in the long discourse is full of the burden of transitory defective existence and of the desire of emancipation, first from turbulent passions and fleshly motives, and then from all activity save in an intense concentrated meditation on the “greater soul to which each soul belongs,” until contemplation brings about absorption or identity, and all mere phenomena are for ever cast aside as the unfettered intelligence has at last

“Come on that which is, and caught  
The deep foundations of the world.”

Complete knowledge thus brings beatitude, but it has to be attained by a complete subjugation of the senses and cravings of unsublimated humanity. “When one discards the desires of his heart and finds his sole happiness in self-contemplation he is to be deemed of steadfast mind.” “He seeks no pleasures, feels no affection, fear or anger, has no attachments, has no delight or disgust in life’s joys or annoyances. His senses are subdued, the taste for these objects quits him who has caught sight of the Supreme.” It is the man thus completely disciplined, and he alone, who attains the sanctifying knowledge

which "reduces all action to ashes." This knowledge alone produces absolute tranquility as all doubt and fear vanish along with all desire. He then who through abstraction becomes detached is no longer subject to any stain of sin, and he needs no further merit. All this reasoning *in vacuo* tends to brooding indolence, and it is certain that the capacity to render useful service to our fellow men must decline by want of exercise. Beneficence and complete disinterestedness are indeed enjoined; ostentation and superfluous penance are condemned; but though rectitude, innocence and golden silence are commended the exaltation of mere musing above real exertion must lead at last to narrowness and spiritual pride in those who think they have gained the true inner light, and must unfit even noble natures for this world of mutual needs and mutual aids. The mass it must lead to apathy and indifference, as indeed the equal meanness or illusory worth of all subjects is proclaimed, and thus the way is paved for

"a listless unconcern,  
Cold, and averting from our neighbour's good."

Telang was saved by his versatile abilities as well as by the necessities of his position, from yielding to his natural tendency to meditation. It is one marked effect of close contact with the English and British influence in India that the natives become thus as ambitious of social advancement as eager for the means of securing it as the English themselves. Wealth, title, civic and political distinction, are rewards before which the honour paid to the scholar and sage as such fades into dimness, and the present generation of cultivated Hindus want only physical robustness and public experience, or a modest sense of inexperience and reasonable limitation of practical aims, to be outwardly indistinguished from the mass of pushing intelligent Europeans with whom they mingle. But just as the national life and strife of centuries have stamped even upon the naturally characterless Englishman a certain impress of practical sagacity and energy in actual work, so the even longer prevalence of a meditative view of life as insignificant and illusory, an outgrowth at first



from the character, of the Hindus, has reacted upon that character and, prevented in too many cases the union of comprehensive views with a due appreciation of circumstances and an energy that refuses to be baffled by the recurring difficulties of petty details. How fully Telang sympathized with the disposition of his countrymen his written and spoken words both manifested. His success in mastering the problems of active life without ever losing touch of the speculative thought of India, in making the nature and discipline afforded by philosophic study an instrument for furthering the present interests of his people, is a part of his life which well deserves study and imitation by all whose purposes are as high as his.

The other two episodes contained in the same volume, the *Saundaryajatiya* and the *Anugita*, are treated with not less learning and sagacity than the *Bhagavadgita*. Nor does candour or boldness fail. The poems are referred within wide limits to the same period as the *Bhagavadgita*. Their doctrine, it is shown, is substantially the same. The study of the Vedas, though an indispensable preliminary, is declared to avail nothing of itself towards final emancipation. "The Brahmana has not yet degenerated into the mere receiver of fees and presents, but is still in possession of the truth," and the truth is a living realization of the basis of things as eternal in the past and future, and of all phenomena as merely transient and illusory, produced by the play of a boundless creative power, and to the unillumined mind seeming real, but, in truth, only as the forms seen in dreams, since eternity implies immutability. This knowledge and the intense conviction of it once attained transcends all piety and impiety, being indifferent to all worldly honours and temptations. He who has gained it lives in the world of ideas, standing behind all unsubstantial phenomena, and thus attains, through indifference, that happiness which Plato ascribed to the just man, rising above all ignorance and perversion through the steady contemplation of the self-existent essence of goodness, virtue, and justice as universals.

The *Anugita*, the third of the episodes embraced in Telang's volume, he makes out to be considerably later than the *Bhagavadgita*, though still as early, probably, as the fourth century B. C. It presents indications of a considerable development of ceremonial, and it assigns supremacy to the Brahmans with a distinctness unknown to the earlier poems. Whether it preceded Jainism and Buddhism appears uncertain. The references to heretical sects and the use of such words as Nirvana and Chakrapravartana are not conclusive. The poem professes to be a *resumé* or recollection of the earlier *Gita*, but still bears the tinge here and there of a modification of thought. The position of every being in this world or a higher one is determined by his actions in a previous state. In neither is there security. Desires lead to sin, and sin to a new birth in misery. At last comes the abandonment of a worldly life, indifference through discipline to mundane objects, and a happy eternity free from change through knowledge acquired by contemplation of the formless infinite. By austerities and intense meditation the student of the Vedas becomes conscious of the self within the self, which yet eludes complete apprehension like a figure in a dream. Such a one has conquered the triple world, lost all susceptibility to pleasure and pain, become divine, and quitted the trammels of the body for union with the boundless reality that lies beyond phenomena. These thoughts and the illusory character of sensible objects and delights form the burden of the strain throughout the poem. The effect is tiresome to a European, but the subtlety and hazy grandeur of the thoughts is immensely attractive to the Hindu. Telang without being enslaved by the spirit of philosophical musing, yet wandered with great pleasure in the half-realized world of ontological speculation, and never probably had a more congenial occupation than in translating this volume of the Sacred Books of the East. The sound scholarship, acuteness, and admirable method of his work made the volume quite worthy of its place in the remarkable series of which it forms part. There is here, as elsewhere, the difficulty inherent in translating not

merely the language but the thoughts of an early generation into the speech of a later one. Terms which have a certain range of identity yet differ widely in their whole suggestion. Centuries of thought have poured into the modern languages of Europe a wealth of associations which is wanting to the earlier tongues, and these in many cases gave expression to a whole world of notions, which we can no longer fully realize. This difficulty even Telang, with his mastery of English and his indigenous familiarity with Hindu thought, could not quite overcome. Such words as "Brahman" and "Maya" have not a precise equivalent in English, because the group of ideas of which they represent a part has never existed here. The words "faith," "devotion," and even "knowledge" suggest thoughts coinciding only in part with the Sanskrit originals. Thus we are prevented from getting an absolutely clear and complete view of the sense of ancient books of philosophy; much less can we place ourselves at the exact standpoint of feeling which is natural for those to the manner born. Our Bible speaks in a voice that thrills the Christian with a thousand memories and traces of past emotion unknown to Hindus: so, too, the Bhagavadgita and its like have for Hindus a meaning beyond the mere words, an influence of association which we of another race can never completely seize. Even amongst the learned of to-day an accord in words is sometimes found along with a great divergence of thought between European and Indian scholar: how much more when the voice of philosophy has to be heard across a gulf of many centuries!

In 1874 Telang was already sufficiently matured in scholarship to edit Bhartrihari's sententious Satakas for the Bombay Sanskrit series. Ten years later he edited the play Mudrarakshasa for the same series. Both works are models of careful editing and of acute reasoning as to date and readings. They show, in fact, a complete appropriation of the methods of European scholarship, added to a facility in following or divining the author's course of thought, references, and allusions, which to a European would be almost impossible. The argument by

which he assigns the great Vedantist Sankaracharya to the latter half of the sixth century A. D. is a remarkable feat of perspicuity. Telang was for several years a pretty frequent contributor to the proceedings of the Bombay Branch of the Royal Asiatic Society, and on nearly all the papers read to the Society on matters connected with Indian Archæology he had valuable observations to offer. As a member of the Managing Committee he was active in promoting the interests of the institution, and after filling the office of Vice-President he was in 1892 elected President of the Society, being the first native gentleman who was thus honoured. He entered on this, as on other high offices attained by him, with universal approval and he would, doubtless, have made his Presidentship an era in the history of the Society, but for his untimely death.

The last literary work of Telang's which calls for particular notice was his "Gleanings from Maratha Chronicles," which he contributed to the Proceedings of the Congress of Oriental Scholars in 1892. Many of the MS. sources on which Grant Duff's History is founded have been lost, but some have been discovered in other copies; and Telang was able to gather from these, and from other documents recently made accessible, many interesting particulars of Maratha life—social, religious, and political—under the Peshwas. We learn how the famous Council, the Ashta Pradhana, included a Minister of Religion and Learning, and that the Maratha Rajas "considered it their duty to regulate the religious affairs of their subjects" through a Brahman Minister; and that there was an amount of actual interference in caste disputes which would now be deemed intolerable. It also appears that there were points beyond which even a Peshwa could not go; as when Bajirao sought to have his son by a Musulman lady initiated as a Brahman.

An order, severely prohibiting the selling of Brahman girls in marriage, marks at once the point of degeneracy to which the popular practice had sunk, and the legislative competence of the Peshwa to correct the evil. That the people should have submitted to such regulation even from the low cast Rajas of Sivaji's

race, is partly accounted for by the claim set up for the family as Kshatriyas, partly by their accepted position as guardians of the Hindu religion against Mahomedanism, partly also, Telang suggests, "in the old doctrine that every king has more or less of the divine element in him," a doctrine which was extended even to the Mogul Emperor of Delhi. Such a divine right in the *de facto* ruler may be compared with the doctrine of the English Common Law on the same subject, and should not be lost sight of by those who on Hindu grounds murmur and cavil at laws and regulations made by their present rulers, after careful deliberation for the general good. Even Musulman sovereigns in some cases brought the sanction of the State to bear on the settlement of a contention between castes, and Telang had the satisfaction of pointing out that on one such occasion the Konkan Prabhus obtained recognition as genuine Kshatriyas.

These same chronicles afford instances of a brutality in punishment revolting to modern ideas; as when a Musulman was publicly disgraced, and then trampled to death by an elephant, for keeping a Brahmani mistress. But our own notions on this subject are of such recent growth that we must not judge others by too high a standard. The frequent instances of political treachery mark a really greater debasement of moral feeling, and are indications of a general debility of character, which, infecting their conduct and policy all round, unfitted the Marathas to remain a ruling race. Responsibility did not accompany the rise to power of their successful men, and "the sight of means to do ill deeds is oft the cause ill deeds are done" in the East as in the West.

Telang was far from sharing that opinion cherished by many of his countrymen, as a ground, or excuse, for discontent that the gradual relaxation of ceremonial bonds amongst the Hindus, and the decay of purely religious, as distinguished from moral, observances is solely due to the presence and overpowering influences of a European Government. He insists on the truth that the surrounding conditions, even in the days of the Maratha power, were too strong for the dominion of rules which had their birth under

quite other conditions. "Originally," he says, "the incompatibility manifested itself only in certain special instances. But once the solvent, so to say, is applied at one point, similar results sometimes follow, even at other points, though the conditions are not equally directly favourable." This is a condition from Indian history and experience of what has often been observed else where, that a revolution of thought, a weakening of reverence cannot be confined to its immediate object ; it must, like the vibrations of an earthquake, extend far and wide over neighbouring and cognate objects. The spirit of inquiry set on foot by startling infringements of received principles, may even degenerate into a spirit of questioning and cavil without any solid reason for discarding what use has consecrated. Thus, real and great reforms are too often accompanied by excesses or vagaries, which are afterwards used to discredit them. The general central current of human affairs in any of its greater streams moves on unaffected by such eddies of unreason. It absorbs old inconsistent habits of thought, modifies or annuls them. This, as Telang shows, was as noticeable under the rule of Sivaji's successors, and of the Peshwas, as under the British rule. A new caste could be assigned to a powerful prince, defiling association could be condoned, warfare and bloodshed—the duties of a Kshatriya performed by Brahmans—could be approved and glorified, sea-voyages could be excused, and even the remarriage of a young widow sanctioned by the most reverend authorities, while the Maratha power was at its height. Political and utilitarian considerations prevailed against mere tradition, and even the professional expositors of the sacred law could stoop to accommodate the secular needs of the age and great men's worldly purposes. In a contention between the Brahmans and Prabhus, the champions even of the former, finding the Sastra doctrine opposed to their pretensions, could exclaim, "What does it matter what is in the Sastras? Who looks at them? The Peshwas are sovereigns : people must act as they direct."

Some striking instances are given by Telang of the degeneracy of the Brahmans as a priestly caste, or, at least, of the decay of

sacred learning amongst them, even under the **Maratha** rule. The corpse of the great Captain Parashram Bhau Patvardhan had to be burned without the recitation of the proper "mantras" because the joshis of the neighbourhood could not read or utter them. On the cremation of the swami of the Dhavadasi the officiating Brahmins blundered seriously with the ritual book in their hands. It is clear from such cases that, as in the growth of secular interests, religion and ritual had come to occupy a smaller space in the attention even of the Brahmins, a minute acquaintance with their scriptures had become comparatively rare. Under the British rule material progress through competition has naturally diverted men's minds still more from incantations and ceremonies. Acquaintance with European science and literature has placed native scholars and their disciples at a stand point from which the absurdities involved in many popular myths become conspicuous. The bonds of custom are in a great measure broken whenever they encounter a clear individual interest. The mundane causes of success come into ever greater prominence. An essentially secular tone of mind grows up, and as the demand for priestly intervention decreases the supply also falls off. Thus the decline of religious feeling in its former sense is a necessary concomitant of advancing activity and material welfare. No true patriot can wish the tide to turn. What remains is to collect and cherish all those influences, hallowed by tradition and human affection, enshrined in the old system, for the permanent uses of future generations in elevating their morality and enabling them to grasp the unseen and eternal with a more vivid realization of its true relations to the present in which we live.

Telang cites with evident relish the instance of the aged Gopikabai counselling her grandson, the Peshwa Savai Madhavrao, to curtail sacred ceremonies and leave the daily worship to the family priests in order to gain time for practical business. As in the scenes of more active life in Europe the feast days have become "so solemn and so rare," so he perceived that in

the modern struggle for existence and welfare his people must discipline themselves to more vigorous and continuous exertion and indulge less indolence veiled in sacred disguises.

In dwelling on such instances as these of the inevitable changes in religious and ceremonial relations that must attend social and political progress and development, Telang sought in the quiet unobtrusive way characteristic of him to soothe the impatience of his countrymen, and especially of the Brahmans, arising from their sense of being left stranded by changing current of national life. He had gone through a period of impatience himself when, measuring the educated mass too much by his own standard of ability and generous zeal, he had fretted at the obstacles raised to their beneficent activity by an "alien government." As time went on he became more and more impressed with the feeling that what exists is no affair of mere accident; that in all states individuals must suffer more or less for the defects of their class; that the internal moral changes on which external progress depends are wrought but slowly; and that a long process of adaptation was necessary before his countrymen could as a mass, take full advantage of the enlarged means of happiness and the more spacious life placed within their reach by British rule. Childhood and manhood, as he admitted to the present writer, cannot be enjoyed together, and as the Hindu gradually moulds his manhood on an imperial model, so will he, step by step and without any revolutionary shock, take an equal or a naturally appropriate place amongst the governing as well as the governed in her Majesty's dominions. In the mean time circumstances must be yielded to or circumvented when they cannot be overcome. The necessary conditions and accompaniments of progress must be accepted and means be found for reconciling the old with the new. The Indian bride, roughly captured, must accept her captor's life and interests as her own before she can share his glories and rule his household. In his own person Telang gave up no observance of his people or his caste except under a conscientious conviction that the change was



called for in some interest of patriotism or progress. His tenderness for the susceptibilities of his family and fellows made him shrink from any violation, even of their prejudices, which was not imperatively called for, and his strong historical sense caused him to revolt at sudden transitions.

It is a matter for some regret, though not for surprise, that manifestly disintegrating forces operating from without under British rule should have alarmed the more conservative members of the Hindu community. They were thus driven into a movement of reaction and resistance which, appealing to feelings and traditions closely interwoven with the pride of race, repelled all changes as dangerous to religious and national integrity. Thus it was that in some measure the general effect of British administration has been to render feeble the various forces which were in old times working from within the community itself as a community. We say in some measure, because the retrograde influence is but short-lived and all but impotent as compared with the stimulants to progress that abound on every side. The old system, subjected to strains which it could not bear, was crumbling away even before the establishment of British rule. What development would have succeeded on purely native lines it is impossible to say with any certainty. It would have been accepted without jealousy, but it would have been incomparably less expansive and less satisfying to the wider needs of humanity than that which may be expected from the philosophic eclecticism and the moral suasion of such men as Telang. The process would be more rapid, more complete and beneficent, were the Telangs more numerous, and were they aided by more kindred spirits amongst the European community in India. In too many instances the only alternative that occurs is the crude substitution of some European rule or idea for an indigenous one, having at least the merit of congruity and immemorial acceptance. Thus in the sphere of jurisprudence a fragment of English law is thrust by force into the Hindu system. A formula is arrived at expressed in familiar jural terms, and development is at that point

arrested by a slavish submission to a precedent, which ought to be regarded as no more than an expression of the growing customary law as it existed at a particular moment. It is a strange recognition of the native customary law, which arrests its growth even where it does not suffocate it in an unnatural environment. In this field, and in every field of moral activity the final outgrowth of a larger range of ideas, embracing more, and giving larger play to the best energies, would be immensely accelerated by a continuous and generous exercise, not of more tolerance only but of wise and profound appreciation. The experimental demonstrations of the possibilities of human relations and institutions which nature presents to us are by no means confined to the European nations ; and in determining what will best make for the happiness and prosperity of India, the stamp which circumstances and history have set on its people is an element of the problem not less important than it is in England, Scotland, or France.

It was natural and inevitable that one so variously and highly endowed as Telang should become a man of 'light and leading' to many of his aspiring countrymen. It is certain that they could not have chosen as a pattern and guide one more intimately united with them by sympathy and hope, or one more capable of winning respect for them from those who judge a nation by its best men. The crowd are everywhere a mass to be moulded by the more energetic and capable spirits who yet are not estranged from the people. Telang in rising himself drew his countrymen with him. They are right who reverence his character and example. By dwelling on these they will be led through sympathy to those conceptions of duty and of right which must be the means of bringing them into harmony with the general moral progress of the world. Mere enormous aggregates of population are simply oppressive or revolting. "We start, for soul is wanting there," as the contemplation of so huge a mass uninformed with the spirit that earth shares with heaven, checks our hopes and aspirations as members of the same great family. It is the greater men who alone give interest and character to the mass. To them the world

looks as types of what a race can attain to, to them the race itself must perpetually turn as human imitable patterns, not wholly beyond the reach of their own hopes and endeavours. The great men in India of the future must be great in an imperial sense, of wider reach and more complete appreciation than in the past. The people of India can assume or resume a part in imperial greatness only by steadfast faith and imitation of their heroes; they must grasp their hands and move in their paths. A principle, an idea must be incorporated, incarnated, in an individual, thus heaven-born or heaven-endowed before it can be assimilated by the mass of mankind. Thus "godhead deals with human powers," and the appalling voice of divine command is translated into sweet human accents of sympathy and encouragement. Thus Telang answered for many the questions they are putting to themselves without reply. Dazzled with the new light, and "moving about in worlds half-realized," they look with hope and confidence towards the one who is all their own, but whose voice is clear and whose march firm and definite. Telang had that basis of greatness which consists in manifold affinities. He absorbed a large part of the thought and interests of his time. His mental perspective, his capacity to compare and appreciate, was thus nurtured and disciplined. He was freed from all extravagance of judgment or expectation—ready to "hail the light that broke from either side," and to watch calmly the dawning of truth and the growth of science and wisdom among his fellows. His own wide knowledge was continually transmuted into virtue—an active desire and power to lead others into the path of enlightenment and reason, to support them until they should become self-supporting and in their turn leaders of men, "helpers and friends of mankind." He is a blessing to his community who extends the area of its human life—who introduces it to new friends and acquaintances, and for each side makes the other know those points of common interest on which they can afford each other mutual support. The Hindu moves in the ruts of tradition; the European is repelled by superficial blots from a world of thought,

as rich, though not so various and exact, as his own. Telang could extend a hand to each, could bring them into happy communion, "self-reverenced each and reverencing each." What he was other Hindus might be; what he esteemed or endured might be approached, embraced by others of his race. He multiplied the points of union at which human brotherhood greets fellow men, and drew us nearer by one step to a sense of imperial identity. The greatness of Telang was at bottom specially a Hindu greatness. It was contemplative, subtle, and benevolent, but naturally shrinking from strife and vehemence, somewhat deficient, too, according to the English standard, in power of initiative. But to the natural wealth of his intellectual gifts he was able to add an invaluable store of European ideas, knowledge, and principles. He associated for many years, at first with receptive humility, always with an engaging modesty, with the most gifted Englishmen of the Bombay community. He thus gained a wide philosophical outlook on human affairs. The touch of bitterness with which in his younger days he at times discussed the motives and abilities of Europeans gave way to a balanced charity, and a recognition of the essentially great central qualities which have won for Englishmen the place they hold amongst the nations. His mental activity and his eager desire to secure for his countrymen all the material aids to progress led him occasionally into fields of thought and disquisition for which he was less thoroughly equipped than for the pursuits of Indian scholarship. His essays in Economics have only the value that must always attach to the reasonings of an able and patriotic man looking on social problems from an independent standpoint. In the field of public education his ideas were of a range and height exceeding those of most of his colleagues in the Educational Commission, and as a member of the Legislative Council he was practical, fertile, sagacious, and moderate.

Telang had a highly developed sensibility, a temperament which in argument and in ordinary discourse caused him to tone down the expression of his strongest convictions, to avoid direct contradiction, and to discover points of agreement, rather than of

difference, between himself and his interlocutor. The manner thus produced was more than amiable; informed by a high and quick intelligence it became almost fascinating. Without compromise of principle he could become all things to all men, and exercise an even more persuasive force in conversation than in debate. Herein consisted a great part of his widespread influence. Amongst Europeans he was welcomed on a footing of genial comradeship, because of his instinctive adoption of their own points of view for the purposes of courteous comparison. Completely at home amongst his own people, he yet continually led his companions by obvious steps to conclusions far in advance of the accepted formulas from which they started. But this same ever-ready prevailing and pervading sympathy which gave him such a charm became a weakness and a snare when his tenderness was strongly appealed to. He found it impossible to maintain a stoical consistency where the happiness of those near and dear to him was concerned. It is to his overpowering tenderness that we must ascribe Telang's weakness in making his daughter a bride at eight years of age. The act was opposed to his principles; he felt it to be wrong and of evil example, especially in him, to whom so many looked for guidance and encouragement in their strivings for social reform. Yet he could not resist the pressure of his family and his caste friends. He could confront open resistance and denunciation; but entreaty and the sight of pain were too much for his firmness. His "failing leaned to virtue's side," but a nation's regeneration has to be achieved through pain; and men of sterner stuff are needed to live the life he conceived and sought for, but could not quite attain.

Telang, as his minute on the Education question shows, had but little faith in the formal teaching of morality spread from living examples and practice. He shared to the full in such noble aspirations as are expressed in Mr. Chandavarker's pathetic lecture on the Moral Basis of Progress, but felt like him that no solid foundation could be found in the mere inculcation and recep-

tion of ethical dogma. He relied most on the personal influence of a high minded teacher, by which his own character had been so much shaped, gathering from his experience that a new moral being is often created in the sudden confluence of emotional sympathy ; and that apart from some such vivifying influence the mind may never really awaken to the teaching of books, even through parables and history. The process of individual purification and elevation must almost necessarily start from an enthusiasm kindled at a living heart. Thence it is that unseen examples are afterwards realized in description ; and a noble character advancing step by step gains support and animation from an increasing company of ideal associates in well-doing, whose ever present approval or reproof supersedes by degrees the shallow and mean judgments of the crowd. Whether Telang ever reached that highest idealization, that faith and consecration of duty, by which the fervent Christian sees God in all the problems of human life, finds a sufficient motive in the divine will and an exceeding great reward in the divine love, may be doubted. There is no reason for supposing that he ever, even in his inner convictions, accepted the formal tenets of Christianity. The historical proofs were insufficient for a mind like his, exacting in matters of logical reasoning, and tenderly attached to his family, his people, and all in their customs and traditions that could nurture a loyal, hopeful affection. In the domination of such feelings he sometimes found his self-sacrifice, but like many of his kind he was more or less familiar with the Bible, and shared with them, no doubt, the inexpressible yearning for an accepted declaration of the will and promises of God. The golden basis of the moral currency—the consciousness of Almighty beneficence ever present—is wanting to the reasonings and exhortations of Hindu moralists, who, like Mr. Chandavarkar, strive to find for their countrymen a sufficiently powerful motive in the abstract love of good for its own sake, and in the conception of its utilitarian benefits. Yet, may we regard the light vouchsafed to such earnest seekers after truth and virtue as a part of the divine revela-

tion. Their lives have a vitalizing influence beyond all other teaching ; theirs, like Arnold's, are the

"souls tempered with fire,  
Fervent, heroic, and true ;  
Helpers and friends of mankind."

Struggling spirits gather round such leaders and follow them,  
albeit with halting steps,

"On to the bound of the waste,  
On to the city of God."

It was a phase of his highly sympathetic nature that Telang was keenly alive to sensuous impressions and especially to the beauties of nature. Though a town-bred man he delighted in fine scenery ; and for some years before his death his happiest hours were spent in quiet wanderings in the neighbourhood of a house which he had acquired at Lanowli, on the ridge of the Ghauts overhanging the Konkan and the bordering sea. Making close acquaintance with such scenes only in mature years he accepted the joy they gave with a child's freshness of feeling ; nor had he ever to grieve with Schiller over the departure of a time when, as the poet laments, "for me lived the tree and flower, the silvery fountain sang for me, and from the echo of my life the soulless itself took feeling." On the contrary the changing aspects of sky and earth in the stupendous variety presented by the tropics were an unfailing source of calm delight and inspiration to him, as in quieter manifestations to his revered Wordsworth. He sought communion with nature and with a mind full of the suggestions of the great poet he found a response and a stimulus to all his higher thinking in the revelation of the Creator's power and goodness in earth made beautiful for our delight. The companions of his walks were stuck with the influence of scenery on his phase of meditation and his tone of conversation. They gained from him a new resource and a new faculty of lofty enjoyment in the boundless range of associations, of action and reaction, between

themselves and the world spread round them, with all things gaining loveliness when spiritually discerned.

Telang was from his early years a constant and appreciative student of the English poets. He regarded them as the great enduring glory of the English nation and in familiar intercourse he could easily be drawn into quotations, especially from Wordsworth and Tennyson. Wordsworth to him was never prosy any more than would be the ordinary talk of a beloved friend. The long-drawn contemplative passages, touched with gleams of moral elevation, harmonized completely with his own disposition and mental habit. For poems of action he had somewhat less liking; and the unnatural exaggerations of the Sanskrit poets rather repelled him. He admitted that for moral nurture in the modern world, as well as for information and discipline, the English literature was for Indian students preferable to the Sanskrit as a basis of instruction, but if challenged he could insist on the lofty ideal of character presented by the Ramayana and the native vigour of Tukaram's Maratha verses. In this, as in other spheres, his intellectual bent and preferences were essentially modern and eclectic, but his strong affections bound him closely to all that was dear to his people, and all that formed part of their glory. He looked for additions to this glory through the exercise of native genius on the new and firmer ground opened up by communication with Europe, and could not believe in the advantage to imaginative capacity of a mere confinement of ideas. He explained the attraction which Wordsworth had for him by saying that he felt his writings to be the practical embodiment of the philosophy of the age in the sphere of moral aspirations. The truth is that he, like many of his more thoughtful countrymen, found a repose—though but a troubled repose—for the soul in the spirit of Christianity with which they were surrounded in such writings as those of Wordsworth, without being called on to definitely renounce or receive any specific dogmas of theology. He and they were formed for faith, devotion and reverence, and in the many phases of our imperial history his disciples



may have much to do for the good of that Greater Britain which is so variously composed, and calls for the exertion of such various gifts and capacities. In the moral ripening of the future they may yet have an invaluable, incalculable service to render to mankind.

For his services on the Education Commission Telang was made a C. I. E. After his death a public meeting was held to raise a memorial in his honour. At this meeting the Governor of Bombay, the Chief Justice, and the leaders of native society joined in commendations of his character and abilities. Telang never affected a churlish disdain of such tributes as these; but his most fitting monument will be found in the lives of a multitude of his countrymen made wiser and nobler by a loving remembrance of his words and works.

# LAND REVENUE CODE AMENDMENT BILL OF 1885

## THE SPEECH OF THE HON. MR. TELANG ON THE FIRST READING.

The questions dealt with by this Bill\* are of so much importance that I will crave leave to make a few remarks.

\* Note 1—Land Revenue code amendment Bill of 1879.

Whereas, for the purpose of assuring to holders of unalienated land the full advantage of all improvements in their holdings effected by them or at their cost, it is expedient to define more clearly the conditions affecting the revision of land-revenue assessments and, with this object, to amend the Bombay Land Revenue Code, 1879 : It is enacted as follows :

I. The latter portion of section one hundred and six of the said Code, commencing with and inclusive of the words "A revised assessment" is hereby repealed.

Repeal of part of Section  
106 of Bombay Act V of  
1879.

Amendment of section 107.

2. For section one hundred and seven of the said Code the following section shall be substituted (namely) :  
"107. In revising assessments of land-revenue regard shall be had to the value of land and, in the case of land used for the purposes of agriculture, to the profits of agriculture :

Conditions applicable  
to revisions of assess-  
ment.

"Provided that if any improvement has been effected in any land during the currency of any previous settlement by or at the cost of the holder thereof, the increase in the value of such land or in the profit of cultivating the same, due to the said improvement, shall not be taken into account in fixing the revised assessment thereof."

### STATEMENT OF OBJECTS AND REASONS.

\* At the time of the earliest revision of a survey settlement in this Presidency nearly thirty years ago, the Government of Bombay laid down the principle that the assessment of land should not be enhanced on account of increased value due to improvements effected by the holder during the currency of any past term of settlement. This principle received legislative sanction in the first Bombay Survey and Settlement Act ( Bombay Act I. of 1885, Section 30 ) While this section was reenacted with little change in the Bombay Land Revenue Code ( Bombay Act V. of 1879 ) Section 100, another section was added (Section 107,) which, although it has never been so applied as to modify the principle that the tenant should be secured in the enjoyment of his improvements, does reserve to Government the power to consider in fixing a revised assessment the increased value derived from certain classes of improvements. As the Government has not, nor ever had, any intention of using this section to tax improvements, and as it is undesirable that any ground should be allowed to exist for misapprehensions which may discourage the application of private enterprise and capital to agriculture, it is proposed to repeal Section 107 and to re-enact the last part of Section 106 in a new section to be numbered Section 107 in such terms as may set forth clearly, absolutely and without qualification the two simple principles (1) that assessments will be revised on consideration of the value of land and the profits of agriculture; and (2) that assessments will not be increased on revision on account of increase to such value and profits due to improvements effected in any land during the currency of any previous settlement by or at the cost of the holder thereof.

I do not propose to follow the honorable mover\* in the very exhaustive disquisition on the subject of our Land Revenue which he has given in his speech, although there were points made in that speech to which I think fair exception might be taken. For instance, with reference to the comparisons made by the Honorable Mr. Peile between the pressure of the land revenue under British Rule as compared with that under native rule. There might be something said on the other side. But I am content to waive the point on the present occasion. I should say that the British Government ought in this matter to rise superior to the practice of the native Governments during the periods to which the Honorable member has referred. In those periods, according to my understanding of the subject, the native Governments were themselves deviating from their own traditions of past times, and the system of those degenerate days should not be pointed to for comparison, for the British Government would not be worthy of its position unless it rose superior to the system prevailing in those days. A fairer comparison would be one with the native Governments as they were in times much earlier than those to which the honorable member has alluded. There is one other point made by the honorable mover on which also I should like to make a remark in passing, and that arises on his statement that the Survey Department has not the unfettered discretion which some people attribute to it. As I understood his contention it amounted to this: the Survey Department's proposals for enhancement of assessment are liable to review and are carefully reviewed by the Government and the Secretary of State. Now the complaints as regards these enhancements being extravagant and such as ought not to have been made are complaints as to the first revision. I do not remember its being anywhere suggested, that a second revision has yet taken place; the second revision has not yet taken place and we do not know on what principles it will be conducted or what the practice respecting it will be. But with regard to those first revisions the honorable mover has shown what indeed has been familiar to those

\*Honorable Mr. Peile.—

who have considered the subject before, that in the process of revision there has been a reclassification of soils. The Settlement Department of the Government has said, and probably correctly from its point of view, that in this reclassification it has not had regard to any improvements effected by the cultivator. The Honorable Mr. Piele—No, excuse me. I said they protect any that can be identified. If you cannot identify them how can you respect them ?

The Honorable Mr. Telang—I am quite content to accept that correction, but what is complained of is that in this process of reclassification, where the Survey Department says “we are re-classifying not in reference to the land-holder’s improvements but to rectify errors committed in the previous survey ” the ryots say “you are re-classifying in the light of what exists at present, and practically, in classing our holdings higher than before you are really taxing our improvements.”

The Honorable Mr. Piele :—Will the honorable member give the council an example of an improvement which will be taxed in such a case ? What is an unrecognizable improvement ?

The Honorable Mr. Telang :—I am not able to say just now what is a recognizable improvement. That, as the Honorable Mr. Forbes Adam says, is a matter of detail which requires specific knowledge of what is actually going on. At present I am only pointing out the complaint made. Now the Government may say that they examine the reports of the Settlement Department, but these do not reveal any detailed information by means of which the reports could be corrected. I am not saying just now whether the complaint is true or untrue ; that is a matter on which specific and detailed information will have to be brought forward. I am only pointing out that this is the complaint which is made, and on that point it is also worth noting that the orders which are made upon the basis of this revised classification, are made by Government in correspondence with its own officers, the parties affected by them never knowing any thing of what is going to happen. What the honorable mover has said is no doubt

correct, viz., that if on fresh revisions there is no change of classification of soils, one very great, and as I understand most important, ground of complaint will have been removed. But I entirely agree with what has been said by the Honorable Mr. Badruddin Tyabji, that it would be desirable that the assurance which has been given not only by the honorable mover here to-day but in correspondence which took place between the Government of Bombay and the Government of Lord Ripon in 1883—that that assurance should take the form of a legislative enactment. As matters stand, under section 106\* of the present code a survey and all operations subsidiary to it which I suppose include reclassification—may be ordered by Government although the settlement cannot be altered during the thirty years. The Government having expressed itself in favor of a liberal policy, I would suggest they should as far as possible give that policy legislative form. The principal to take note of in these matters is not merely that the policy should be liberal but that it should appear to be so to the persons affected by that policy. The honorable mover's explanation is enough to show that the authorities mean to deal liberally by the ryots in these matters, but it is desirable to give them legislative assurance that this reclassification, which is one main point of their complaints, will not hereafter be entered upon. Another point I wish to refer to is that alluded to by the Honorable Mr. Forbes Adam. He asked a question in regard to Local Fund Roads and whether any enhancement would follow upon an improvement of that character. There has been a discussion on the subject at an association in England at which a former member of the Government of Bombay Mr. Rogers, declared that under the

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*Note 2 Sec. 106 Bombay Act 5 of 1879.—“It shall be lawful for the Governor in Council to direct at any time a fresh revenue survey or any operation subsidiary there to, but no enhancement of assessment shall take effect till the expiration of the period previously fixed under section 102. a revised assessment shall be fixed not with reference to improvements made from private capital and resources during the currency of any settlement made under this Act or under Bombay Act. 1 of 1865, but with reference to general considerations of the value of land whether as to soil or situation, prices of produce or facilities of communication.”*

principles of the survey adopted at present such improvement could not be taken into calculation for purposes of enhancement. I presume that that principle would be accepted by the honorable mover, and in that case I would suggest that that point also might be cleared up in the present Bill. There are one or two other points which it might be desirable to consider—whether, for instance, “improvement” is a word which might not be defined in this Bill. There is a definition in the Bengal Tenancy Act and also in the Irish Land Act which might be of use in framing a definition for our own purposes. One other point I wish to refer to. I would desire the honorable member in charge of this Bill to consider whether there may not be some means adopted by which the final orders of Government as regards these enhancements should not be issued without giving an opportunity to the parties affected by them to make their representations to Government if they so desire. The honorable member has said that the land revenue is treated by the Government as a tax on the agricultural population, and that it must run parallel to the taxation imposed on the other classes of the community. In the latter case all taxation is imposed after full opportunity is given to such classes to make themselves heard in order that any complaint may be remedied. There is no reason that I can see there may be, but I cannot see it—why Government should not give a similar opportunity to the ryots to make themselves heard on these proposals. These are the points which occur to me in regard to the Bill. I think the policy of the Bill is one upon which the Government may be congratulated, and I shall not vote against it as it stands, but I think further steps may be taken in the direction the Bill asks the Council to go, in order that the policy of the Government, which we know to be liberal, may also appear to be liberal to those affected by it.

My Lord—I take generally the same view of the Bill as the Honorable Mr. Badruddin has expressed. I shall not dwell at any length upon any of the points which I think deserve full consideration before the Bill becomes law. I understand that it is intended to subject this Bill to the careful scrutiny of a Select Committee,

and that being so, with the explanation which the honorable mover has given, which makes some matters clear which were not clear before, I am not prepared to vote against the first reading. I think the Bill may be very much improved at a further stage, and later on I may have certain suggestions to make with reference to specific provisions.

*Speech on the second reading.*—My Lord—on the last occasion when this Bill was before the Council I ventured to indicate a slight dissent from some of the points which were dealt with by the Honorable Mr. Peile in his elaborate speech in support of this measure. I stated at that time three or four points which appeared to me to be worthy of being included in this Bill, and I also expressed a different opinion from that which the honorable member had expressed in regard to one or two points in relation to the history of land revenue in this Presidency. Upon that last branch of the subject I do not propose to say anything now, as I did not say anything on the last occasion. I prefer to dwell upon those points only which have a direct practical bearing on the Bill before us. There is, however, one matter in relation to the history of this subject which I think is worthy of note and that is, that when the Land Revenue Code was discussed in 1879 before this Council, the Honorable Mr. Mandlik, who was then a member of it pointed out that section 107\* which it is now proposed to repeal, would have the effect which the Government of the present day seem to think it has had or is likely to have. On that occasion Mr. Mandlik's view was not upheld by Government, and the section, although it was stated by him to be one which would probably discourage agricultural

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\*Note 3 107—Nothing in the last preceding section shall be held to prevent a revised assessment being fixed:—

- (a) with reference to any improvement effected at the cost of Government or.
- (b) with reference to the value of any natural advantage when the improvement effected from private capital and resources consists only in having created the means of utilizing such advantage, or
- (c) with reference to any improvement which is the result only of the ordinary operation of husbandry.

improvement, was carried. I mention that in order to point the moral that in this matter, although there is a tendency in the right direction, that tendency does not, go far enough, and looked at from a different point of view than the official one, is not, perhaps, quite so strong as some of us would desire.

So much for the historical aspect of the question. There are, however, two or three points in the speech which the honorable member made on the last occasion, with which I propose to deal more fully because they are matters which have a practical bearing on the amendments, which later on I shall submit for the consideration of the Council. One point which the honorable member made was that the policy of Government now is and has throughout been in precise consonance with the spirit of this Bill. Of course, as regards his declaration that it is going to be the policy of Government for the future, and that it has been their policy for some time past, I have nothing to say. I accept his statement on that point, but in regard to the previous history of the question in this Presidency there are matters which, I think, are worthy of consideration, when we have to decide whether the policy of the Government of Bombay, with regard to land, has always been as liberal as it is declared to be by the honorable member. As late as the year 1883, a speech was made in the Supreme Legislative Council, at Simla by Sir Theodore Hope, who was a distinguished member of the Civil Service in this Presidency, in which he expressed his opinion that taxation of improvements has been the policy of native Governments, that it was in perfect accord with the doctrines of political economy and that it was allowed by the Land Revenue Code. That is the effect of what Sir T. Hope said at Simla, speaking specially with reference to the Bombay land revenue system. This affords one indication that in the past, at all events, the policy of the Government has not been exactly that which the honorable member supposes it to be. I may also say that policy has not been so regarded by many persons in this Presidency. I said on the last occasion that in matters of this sort, the Government must not only be liberal, but must appear to be liberal



to those who are under its sway; and in view of that principle I think it is important to see whether the people of this Presidency have considered the policy of Government to be such as the Government themselves think it has been. On that point I certainly can say partly from my own personal experience, partly from what I have heard from various parts of the country, and partly from certain facts which are notorious to us all, that the policy of the Government is widely understood to be quite different. I can state from my own experience what occurred only recently. I happen to have a small piece of land at no very great distance from Poona, a portion of which, by its situation and other circumstances, is capable of being turned into rice-land. A very small fraction of it had been turned into rice land by a tenant of the previous holder of that property, some four years ago, and I thought I might make use of the rest of the land, which was of similar quality and similarly situated, by turning it into rice land. The piece is only about five or six acres but still there it was capable of being turned into use. I spoke about it then to the person who looks after my property, and he said that the Survey Officers would be at the place in the following year, and if I improved the land, he thought the assesment on the whole of the holding would be considerably increased. Now, I do not say at present whether this is correct or incorrect; the point I am dwelling upon is that the people have not regarded the policy of Government in the light in which the Honorable Mr. Peile regards it. But I must also add that, having myself some suspicions as to the way in which the Survey Officers might deal with the improvement if made—suspicions which the honorable member will probably consider to be unfounded,—I acted upon the advice given to me by the person in charge of my property, and declined to go to the expense of some Rs. 100 or Rs. 200 per acre in order to turn my land into rice land. And I shall certainly not go to that expense now, at least until after the settlement is completed. That is my own personal experience, and I dare say that that is also the experience of many other persons. I think we are justified in drawing from this the conclusion I have

stated, which is also corroborated by the fact that in **Bombay** wealth is not so much invested in land as it is in some other parts of the country. In **Bengal**, I believe there is a strong tendency to invest in landed property, which contrasts very favorably with the unwillingness of the **Bombay** men to do so. This is particularly to be regretted, because there are not merely economical but other sorts of benefits to be derived from the cities coming into close relations with the districts. But the case on this point does not rest simply on the opinion of Sir Theodore Hope, or on that of stray people here and there. Looking into the report of the settlement of the **Nagar Taluka** of **Ahmednagar**, I find this passage in the resolution of Government :—"The fact that nearly 8,000 acres of land which were formerly classed as unculturable have been found under cultivation, and apparently to have required no special labour to bring them under cultivation, shows that at the original settlement the system of classing portions of occupied land as unarable was unnecessarily liberal." I venture to say that the argument used there is not correct, and is one which, if largely followed, must necessarily be unfavorable to improvements by land-holders. The argument seems to be that because at the time of revision Survey there is nothing apparent to show that the land-holder had spent any special labour on the cultivation of land which was treated as unculturable at the previous survey, therefore no such labor must have been spent. It seems to me that it is a clear *non sequitur* to say that what is not apparent now could not have been in existence at a prior date. Supposing a man turns into rice land ordinary land full of rock or other material not favorable to the growth of rice. At the end of 30 years from the time when the change takes place there would be nothing apparent to show it. No officer, however able and sagacious, could tell that there had been expenditure of labour or capital on that land, and it would be a risky thing, from what may or may not appear at a particular point of time, to infer what must have been done or not done at a time long since passed, by the land-holder. Take another point with regard to the levy of assessments in certain

holdings in the Taluka of Nasik. They seem to me to be inexplicable, except on the supposition that as a matter of fact, improvements have been taxed. I have got before me the details regarding several holdings taken from the records. I find that at the original settlement land which was measured at 6 acres 24 guntas, of which 10 guntas were said to be bad was assessed at a total of Rs. 5-4. At the revision, the same holding was found to contain 6 acres and 21 guntas that is 3 guntas less than at the previous survey. But the amount of bad soil there is reduced from 10 to 1 gunta, and the result is that the assesment is levied on 6 acres 20 guntas instead of 6 acres 14 guntas, as at the previous settlement. This will doubtless be explained as due to defects of survey; but what follows is worthy of note. These 6 acres and 20 guntas are divided into 2 groups; one measuring 4 acres 14 guntas is classed as garden land, and another containing 2 acres 6 guntas is classed as dry crop. At the previous settlement, the whole land was regarded as dry crop land, while at the later survey more than half is classed as garden land and assessed accordingly. It seems to me that if at the previous settlement this was classed as dry crop land, and you class it afterwards as garden land you practically tax improvements. It should be also noted that under the reassessment the amount to be paid rose from Rs. 5-4 on the whole holding to a total of Rs. 17 which is an enhancement of upwards of 200 percent. There is another case. I only give a selection out of what I have of a similar character where the original holding was 13 acres 12 guntas, of which 1 acre 20 guntas were put down as bad and only 12 acres 12 guntas were assessed at 6 annas, the dry crop rate. But at the subsequent settlement the net acreage rose to 12 acres 39 guntas, 2 guntas only being allowed as bad soil, which, may be perhaps, explained by saying that the previous settlement was incorrect. But again, about one half of the land, 6 acres 4 guntas is classed here as garden land. It seems to me that cases of this sort corroborate the belief which exists, that the land policy of Government has not been so favorable to the land holder in the past as we hope and believe it is

now. Again it appears from the published reports of the settlement of the Igatpuri Taluka, that some land is classed there as new rice land, and some as old rice land, the latter being taxed higher than the former. This new rice land is what has become such after the original settlement, and though the tax on it is no doubt lighter than on the old rice land, it is heavier than the dry crop rate. That again looks very much like a taxation of improvements, because at a revision settlement land is taxed as rice land and not dry crop land, although it was not rice land at the previous settlement. Another point made by the honorable member in his speech is that assessment of land irrigated from wells existing at the date of the original settlement was reduced. This, I believe, is quite correct; but on the other side you have to remember one important circumstance, that although the rate was reduced, the quantity of land which is brought under the reduced rate is so much larger than on the previous occasion that the total ultimate turns out to be larger, and the landholder has to pay a higher tax than before. I have got here several cases in illustration of this, but I will refer to the one, which is most favorable to the Survey Department. It is one in which the holding was recorded at the original settlement to contain 10 acres 30 guntas, of which 15 guntas were taken as bad soil, and the remaining 10 acres and 15 guntas was assessed, partly at garden rates and partly at dry crop rates. Here, the revised measurement of the land gives 10 acres 33 guntas, that is 3 guntas more than at the previous survey, but the area of bad soil is also increased, which is not a characteristic of the other cases I have referred to. The result is that at the revision settlement the landholder is really taxed on a smaller aggregate acreage viz 10 acres 10 guntas only. The reduction of rates to which the honorable member refers also appears from this statement, while the old rate for garden land was Rs. 3-2, the new one was Rs. 2. only. Nevertheless the amount of tax payable is raised from Rs. 16. to Rs. 24. And this results from the acreage of land classed as garden land being taken as 9 acres 35 guntas instead of 3 acres 20 guntas as at the

prior settlement. That again looks very much like a taxation of improvements. These are all circumstances which we have got to remember in considering what has been the policy of Government in the past in reference to improvements made by land holders.

Another point in the Honorable Mr. Peile's speech is one of even more direct importance on the question which the Council has now before it, and that is what the honorable member called the "random assertion" of some people with regard to the unfettered powers of the Survey Department. I do not remember that I have myself ever made that "random assertion" but I must admit that I have believed it and still believe it to a considerable extent to be true. I think the point of view which the honorable member occupies in regard to that question is different from the point of view of those who have criticised the Survey Department. The honorable member's explanation seems to me to be quite correct if I may venture to say so and is a very fair one when you look merely at the law laid down in regard to the matter in question. But the critics of the Survey Department, and I may say of the Government in this matter, do not look merely at what is law binding on the Department, but rather look to what is the actual practice of that Department itself and of the Government in relation to that department. One thing I may say before going into the details as regards this point. There is a widespread feeling, in which I share to a certain extent, that the central Government, however well inclined it may be to deal fairly with its subjects, is in a great measure powerless against its own departments and I think that those departments especially which bring in revenue to the State are departments, which to a great extent, can prevent the interference of the Government at head quarters. How for instance, does the thing work in the case of the department now before us? The honorable member has given us an explanation of the whole process of survey and settlement. We have got the processes of measurement and classification. We have another important process also which he did not refer to, namely the regrouping of

villages at different settlements-regrouping which lead them frequently to be classed at much higher rates than at the previous settlement. Then finally, we have got the assessment in money of the amount of the tax on each holding. As to the regrouping of villages with reference to the facilities of communication and so forth which they may possess, and as to the assessment of land tax in money the central government will doubtless be able to put some check upon the officers on the spot. But as regards remeasurement and reclassification work, which as the honorable member says, is of a technical kind entrusted to a trained department, I confess I fail to see what materials the Government at head quarters can have for the purpose of checking the local Survey Officers. If the Survey Officers say that a field had been wrongly measured at the previous survey that it ought to be 30 acres instead of 20, then I confess I do not see by what means the Government can check that. Again, if they say that the classification of the soil at the previous survey was wrongly stated in the records, I equally fail to see how the Government could check it. Yet these two are very essential factors in the ultimate money assessment of individual holdings and as regards them, Government must be more or less dependent on the reports which come to them from the Survey officers. And this especially because the settlement reports give no information about individual holding and whole proceeding is conducted *ex parte* and behind the back of the land holder. The view, I have now expressed is not that of non-officials only, but is shared by some of the officers of Government with the outside public. I would refer to a pamphlet issued for private circulation by Mr. T. Hart-Davies, of the Bombay Civil Service, for a copy of which I am indebted to the Honorable Mr. Justice Birdwood. Mr. Hart-Davies says at page [22, 'The well-meaning Government resolution which enacted that an enhancement should only bear a certain percentage on the old revenue has not, as far as the cultivator can see been very productive of results, nor has it operated as a binding check on the operations of the survey. The fact is that every separate department—and this is one of the

chief causes of the unpopularity of the action taken by the Forest Department—has in the nature of things a tendency to try to justify its existence and expenditure by increased returns, a tendency, I may observe, accentuated in last year's General Administration Report on the Bombay Presidency, and it is precisely this tendency which would be corrected, if the fixing of the revenue demand were regarded as the duty of district officers."

The passage just quoted leads one to the consideration of the question how far the district officers on the spot are consulted by Government in regard to the settlement of assessment. It is quite true that before a settlement is finally sanctioned by Government, the Collector of the district and the Revenue Commissioner of the Division are both consulted, and they both make their reports, which are just as much before the Government as the reports of the Survey Officers. Still there is no doubt that many eminent authorities have pronounced the part which the revenue authorities take in the final settlements not to be a satisfactory one. Sir Henry Montgomery in the minute which is published among the appendices of the Famine Commission Report, Mr. A. Lyon and Sir. A. Colvin in the Deccan Riots Commission Report have all of them in substance expressed the opinion that the present system in regard to the consultation with Revenue officers in this matter is not altogether of a satisfactory character. And the resolution of the Government of Sir Philip Wodehouse itself apparently admits that.

The Hon. Mr. Peile.—What resolution the honorable member refers to?

The Hon. Mr. Telang—I mean the resolution which was published in the newspapers, and which stated that the Collector's opinion was obtained too late for the purpose of any adequate effect being given to it. The Hon. Mr. Peile—What you refer to is a letter of which a portion only was published as an extract, while the rest was suppressed.

The Hon. Mr. Telang.—I thank you for the correction. But however that may be, I have here the references to the

opinions of Sir H. Montgomery, Sir A. Colvin and Mr. Lyon, which I have myself seen. Then I also find, from a reference to the recently published settlement reports, that Government have sometimes had to complain that the reports of the Survey Officers have come to them too late for them to consider these reports with the fulness which the importance of the subject demands. In one case which I have a note of, I mean that of the Honaver Settlement, the Government say the reports should have come to them earlier, as it involved an important question. I think therefore that the Survey Department have in actual practice more power than would be supposed from merely looking at the rules laid down for the guidance of the Survey Officers. But I do not wish to labour that point any further, as I do not think that it will be of great importance, if the amendment which I suggest in regard to resurvey and reclassification is adopted. If the arrangements referred to in the correspondence between the Government of Bombay and the Government of India in 1883 are finally adopted, the most of the work that is now done by the Survey and Settlement Departments be done through the agency of district officers, there will be no difficulty of the kind I have now been dwelling upon.

The third point which I wish to deal with is the honorable member's statement that moderation in enhancement is a cardinal principle in our revenue settlements. I am quite content to accept that as the principle which has generally regulated the proceedings of the Government for some few years past. But I must point out that what the honorable member stated to us on the last occasion with reference to the percentages of enhancement at revision in the various talukas to which he referred, is scarcely satisfactory to my mind as that the actual enhancements had been moderate. I say the fact that on a whole taluka the enhancement is not more than 33 per cent is not a matter of so much importance. What is a matter of great importance is how much is the enhancement on individual holdings. It would be very little consolation to myself, for instance, to be told that although my holding is increased 100 per cent, the average assessment on the holding in the whole taluka



taken all together is enhanced only 33 percent. Under the limit fixed by Government as to the maximum enhancement to be made in a taluka, the increase can only reach 33 per cent, as a general rule. But the limit of enhancements on individual holdings is a hundred per cent and that seems to me to be not at all a moderate enhancement when it takes place. In the published reports I do not see anywhere how many holdings are enhanced to the full extent allowed by resolution, nor is there any classification of the various enhancements on individual holding. Without this information, which it is desirable should be shown in all reports, it is difficult to form a thoroughly satisfactory opinion on the subject I am now referring to. But there are some facts which must be weighed against the honorable member's contention. For instance I find that Dr. Pollen, who has been the Special Judge under the Deccan Agriculturists Relief Act for some years, says that "in average years the ordinary Deccan ryot does not get enough from the produce of his fields to pay the Government assessment and to support himself and his family throughout the year." The honorable member referred to the statement made by the committee for the promotion of Agricultural Banks in the Deccan that the nett profit of cultivation in Pandharpur, taking them at 40 per cent of gross produce, are three if not four times the assessment. But I believe that it was the same committee which said that further time should be given for the continuance of the present settlement; and that no enhancement of assessment should be made in the mean time—with regard to which proposal I may mention, in passing, Mr. Hart Davies objects to it, and says this is an attempt on their part to obtain a portion of what the Government ought to claim. It must be remembered that the opinion of the committee therefore and it is also the general opinion, is merely that the assessments which were made at the original settlements were fair, and, in fact, I may add on the whole liberal, and that the complaint is generally confined to what has taken place since the revision commenced. But then the argument was suggested by the honorable member that indepen-

dent considerations supported his view and one of the modes in which he said the success of the assessment could be tested was by a reference to the returns of the Registration of fice. The Honorable member himself pointed out that there is a difficulty in relying upon those returns as satisfactory evidence, because it is not always that you get in full the real particulars of the whole transaction. I have seen from my own experience in the courts that in many instances the sales take place not for the proper market value of the property, but for the whole amount of the debt actually due which is then written off and the property is treated as sold to the creditor for that amount. It must also be remembered, that under the circumstances which have now existed for some time, other modes of livelihood, such as manufactures &c. being much fewer and less paying than they used to be, the population in the districts is pressing on the land, as the only source of gain available. A friend of mine in Bombay bought a piece of land—I ought to say that it was in the Sholapur District and cultivated it to see what he could make out of it; and he found that what he got from the land was only just sufficient to pay the assessment and the wages of the labor employed on the field. These are all matters which must be taken into consideration with reference to the deductions we are asked to draw from the actual selling value of land. From published reports of Government also you find that sometimes land is put up to auction but does not fetch any of these large prices which the return of the Registration office would lead us to expect. The report on the settlement of the Parner Taluka shows that land which was sold by auction for arrears of assessment fetched very small prices indeed and the Collector says that it was probably owing to there being no bidders. In the Bhimthadi Taluka of the Poona District several thousand acres of land were sold for arrears of revenue for very small prices. It was very nearly two lakhs of acres and was sold for some Rs. 15,000 only. I have not got the precise figures by me here

but there was some correspondence on the subject, which was published in the journal of the Poona Sarvajanik Sabha, and the Government, though challenged to do so, have not yet published any answer to it. The facts in regard to these points were all culled from the Report of the Deccan Ryot's commission. As regards crop experiments, I do not know much about them, and can say nothing. But we must remember on the other side that there is the evidence published by the Poona Sarvajanik Sabha in 1873 for the use of the Parliamentary Finance Committee that was then sitting in England, evidence which showed that very often the gross produce was barely sufficient to pay the assessment and the wages of labour employed on the fields. On the whole, I repeat, that as far as the Government is concerned as it is indicated by this Bill, I have nothing to say in the slightest degree against it. I say again, what I said on the last occasion, that the Government and the people may be congratulated upon it. It was only in reference to what has occurred in the past that I thought it desirable to draw attention to certain circumstances pointing to a somewhat different conclusion from that stated by the Honorable Mr. Piele. The Bill, I think, is a good one, but in view of the circumstances to which I have referred, its scope ought to be extended, if the object with which it is brought forward by the Government is to be effectually secured.

The Honorable Mr. Telang moved that to section I of the Bill the following be added.

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“ For the first part of Section 106 the following should be substituted 1-106. It shall be lawful for the Governor in Council to direct at any time, a fresh revenue survey, or any operation

1. Section 106 part first.—It shall be lawful for the Governor in Council to direct at any time a fresh revenue survey or any operation subsidiary thereto, but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of Section 102.

subsidiary there-to but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provision of Section 102.<sup>1</sup>

“Provided that no *such survey* or subsidiary operation as is herein before mentioned shall be conducted after the 30 day of June 1892 on any lands without the previous consent of the holder thereof.”

And said.—“I may mention that the date mentioned in this amendment was fixed with reference to the correspondence which passed between the Government of Bombay and the Government of India in 1883. But I have no particular desire to fix that date, and have no objection to extending it. I have already explained the reasons why I move this amendment. It will afford some certainty to the ryot and cannot do any harm to the State. The operations of resurvey and reclassification have been objected to by many authorities from the famous despatch of Sir Charles Wood in 1862 down to Sir James Caird and they have been admitted to be objectionable by the Government of Bombay and the honorable member himself.

The Hon. Mr. Telang also moved the second amendment. Instead of Section 2 of the Bill substitute the following:—“For Section 107<sup>2</sup> of the said Code the following Section shall be substituted:—

1. Section 102.—The assessment fixed by the Officer in charge of a survey shall not be levied without the sanction of Government. It shall be lawful for the Governor in Council to declare such assessments, with any modifications which he may deem necessary, fixed for a term of years not exceeding 30 in the case of lands used for the purpose of agriculture alone, and not exceeding ninety-nine in the case of all other lands.
2. Section 107.—See note 3.

107—In revising assessment of land revenue regard shall be had solely to such general alterations in the value of land, and in the case of land used for purposes of agriculture solely to such

general alterations in the rate of agricultural profits as may have taken place during the currency of the last preceding settlement.”

Provided (1) that if any improvement has been effected in any land during the currency of any previous settlement by or at the cost of the holder thereof or by means of Local Funds to which such holder has contributed, the increase in the value of such land or in the profit of cultivating the same due to the said improvement shall not be taken into account in fixing the revised assessment thereof and (2) that no enhancement of assessment shall take effect until after the lapse of six months from the date on which Government shall publicly announce or cause to be announced the proposed enhancement and publish the reports of the Survey officers and Collector upon the same,”

“Explanation.—For the purpose of this Section the term ‘improvement’ shall mean any work which being executed adds to the value of the holding on which it is executed, and which is suitable to the holding, and which, if not executed on the holding, is either executed directly for its benefit or is after execution, made directly beneficial to it, and shall include all works and things enumerated in the definition of improvement contained in

Section 3 of the Land Improvement Act 1871, and in Section 76 of the Bengal Tenancy act 1384.”

The Honorable Mr. Peile then opposed the Honorable Mr. Telang's amendment and stated that Government was willing to add to section 106 the following proviso. “Provided that when a general classification of any area has been made a second time

1—Section 3 of the Land Improvement Act 1871

“Improvement” means.

1. Wells, tanks and other works for the storage, supply or distribution of water for agricultural purposes, or the preparation of land for irrigation ;
2. Works for the drainage of land ; for the reclaiming of land from rivers, or other waters ; for the protection of land from floods, or from erosion or other damage by water ;
3. The reclaiming, clearing or enclosing of lands for agricultural purposes ;
4. The renewal or reconstruction of any of the foregoing works, or alterations therein, or additions thereto ;

or when any original general classification of any area has been approved and accepted by the Governor in Council as final, no *such* classification shall be again made with a view to the *revision* of assessment of such area", if the Honorable Mr. Telang would accept this proviso and the clause for defining improvement in place of his amendments.

The Honorable Mr. Telang said.—“ I have no particular wish to adhere to the terms of my amendment which was drawn up in a hurry. Regarding this proviso, if the word “*such*” is struck out and the word “enhancement” substituted for “revision” then I have no objection to accept the form suggested by the Honorable Mr. Peile. But I understand that the Honorable Mr. Peile desires that the word “such” should remain, and the result would be that only a general re-classification would be prevented, and not a reclassification in regard to individual holdings. “No such classification shall be again made” means no general classification.”

The President (Lord Reay) then assured Mr. Telang in the following words “not the slightest apprehension need be entertained that in leaving the clause as it stands now reclassification will be an element in future revisions of assessment. I think I may safely give that guarantee.” The Honorable Mr. Telang replied “the assurance is quite sufficient so long as the present Government is in office. But we cannot be sure what may be done by their successors.” The Honorable Mr. Peile said. “What I desired to point out was that it is not merely the view of the local Government for the time being. The policy has had the sanction of the Secretary of State.” The Honorable Mr. Telang then replied as follows:—

“I cannot admit that the Secretary of State’s orders are always final in Indian administration. Sir Charles Wood in 1862 directed a Permanent settlement throughout the Country and we know the result. With regard to the draft clause suggested by the Honorable Mr. Peile I confess, that as at present advised, I do not think that if the word “such” were maintained the object

which I have in view will be gained. But since it is stated that this matter has been carefully considered by the Government and that the Government are not prepared to go any further, I must accept the wording of the Honorable Mr. Peile's proposal."

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## THE CITY OF BOMBAY MUNICIPAL BILL.

The following speech was delivered by the Honorable Mr. Telang in the Bombay Legislative Council met at Poona on 23rd July 1887, on the motion for first-reading.

"Your Excellency :—The Bill now before the Council is one of such great importance not only to the City of Bombay but also indirectly to the whole Presidency, that I trust I may be allowed to say a few words upon it even at this stage—only, however, as to its general principles rather than as to its details, which can scarcely be properly discussed on the present occasion. After hearing the speech of the honorable member in charge of the Bill, it is satisfactory to me to think that there is, at least to some extent a common platform occupied by those who, like myself, are interested in the advance of popular Government in Bombay and the honorable member. He seems to agree with us as to the success which the application of the principle of popular Government in Bombay municipal matters has hitherto achieved. At the same time I must confess that I find it impossible to perceive how this Bill framed in the manner in which it has been framed, can harmonize with the views which the honorable member has expressed on his own behalf, as well as on behalf of Government regarding the success of municipal Government in Bombay. Looking at the Bill as a whole, I must say that I consider it to be a retrograde measure—so retrograde, indeed, that if in voting I had to make my choice merely between this Bill and the old law, I should unhasitatingly give my voice in favour of the law as it at present exists, with all its anomalies, its laxities of phraseology, and its conflicts of jurisdictions. But having

regard to what the honorable member has said and what we believe as to the intentions of Government in this matter, I think it still possible that, in the later stages of this Bill, improvements may yet be made which will make it more acceptable, not only to myself, but also to those—and they are many—who agree with me upon this. And that being so, I shall not vote against the first reading of this Bill, but ask leave to point out those of its general features to which I am inclined to take more or less strong objections.

It will be convenient to take the points in the order in which they occur in the Bill. On chapter 2, referring to the constitution, I must say a few words. And I must state at the outset that I am quite prepared to take my share of responsibility as one of the members of the Corporation who rejected the proposal referred to by the Honorable Mr. Naylor as made in the draft of the Bill first published—the proposal namely, by which the Town Council was to be converted into an executive body to act with the Municipal Commissioner. When that proposal was first made in the Corporation as it had been made before the publication of the original draft of this Bill, I and others strongly opposed it and I am still of opinion, that our position was well founded. Having regard to the circumstances of Bombay and its society, as at present constituted, I am convinced that a provision of this sort cannot possibly work well. I say that it must prove either an obstruction in the way of efficient executive action or—and this is much more likely—a perfect sham and a delusion, preventing responsibility being imposed upon the persons on whom it ought properly to rest. As, however, this matter is not now before the Council, I will not deal further with it at present, but proceed to other matters which seem to me to call for criticism. And, first I should like to say that I entirely approve of the addition to our municipal constituency of the University of Bombay and the Chamber of Commerce. I am sorry to see from the public prints that there is an inclination in some quarters to oppose this provision.



I think the opposition is illadvised, and I entirely approve of this part of section <sup>1</sup>5. But in regard to the other portion of section 5, making the Municipal Commissioner of Bombay one of the members of the corporation, I must confess I take a different view from that of the framers of this Bill. It seems to me that no sufficient reason has been shown, and none can be shown, why the position of the Municipal Commissioner at the Corporation should be altered from what it is at present. The true principle which ought to guide us here, I think that the Municipal Commissioner should be merely the head of the Municipal Executive; and whatever important proposal he may bring forward should have to be sanctioned by the Corporation before it is carried out. It will not do, then to make the head of the executive an integral member of that body. I have had some conversation on this topic with our Municipal Commissioner Mr. Ollivant to whose ability I gladly take this opportunity of offering my tribute of appreciation. I have heard from him his views on this proposal, but have never been satisfied by them. The main reason adduced was the Commissioner's attendance was always necessary, that it was necessary that he should be always at hand to guide the Corporation and Town Council. But I do not know that making him a member of those bodies will secure his attendance more regularly than will his interest in his work. We cannot secure the regular attendance of members. I can speak to that from personal experience, for my attendance recently at the meetings of the Corporation has, I regret to be obliged to acknowledge been

*Note 1 :—Section 5.*

- (1) On and after the first of April 1889, the Corporation shall consist of 72 members as follows :  
( Namely ).
- (36) Elected at ward election ;
- (16) Elected by justices ;
- (2) *Elected by fellows*
- (2) *Elected by the Bombay Chamber of Commerce ;*  
*The Municipal Commissioner for the city of Bombay and fifteen other persons appointed by Government.*

so irregular, that I fear I shall be disqualified under section 18.<sup>2</sup> Besides, it seems to me, as already indicated, that the principle here is wrong. It mixes up the head of the executive with what should be a purely deliberative body. Furthermore, when the Act of 1872 was passed, this matter was fully gone into, and the provision, as it at present exists, was generally approved. It is true, as I have said before in this Council that I do not consider myself absolutely bound by what the Council has done on previous occasions, and I am not now asking the Council to accept without question what was done by our predecessors in 1872. But what I do say is that the arrangement made in 1872 has worked satisfactorily ; it was arrived at after full discussion; and it is not in itself unjust or unfair and I do not think we should be justified now in disturbing an arrangement of such a character. This is the first great change here proposed, and it is one, be it remembered, which the Corporation has not asked for, but has distinctly rejected in its communication to Government. If we are to be guided by those who have had experience of municipal matters, I will refer to my honorable friend Mr. Phiozshah, who has had such experience in larger measure than most people, and who entirely agrees in the view I have expressed. Having mentioned my honorable friend's name, I may add that I have been in communication with him about this Bill. He regrets his inability to be present in Council on this occasion. But he holds generally the same views as I do upon this whole question.

I shall pass over many of the other sections in this Chapter, for they deal with matters merely of detail, upon which I may

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*Note 2 :—*Sec. 18. Any member of Corporation who (a) becomes disqualified for being a member of the Corporation for any reason mentioned in the last preceding section ; or

- (b) Absents himself during six successive months from the meetings of the Corporation except from temporary illness or other cause to be approved by the Corporation ; shall cease to be a member of the Corporation and his office shall there upon be vacant.

have something to say on another occasion. But there is one clause which I most strongly object to. Section 37 (g) 4 provides that "if the Commissioner shall, at any time before any business or proposition is finally disposed of at a meeting, certify to the presiding authority of such meeting that the said business or proposition is of special importance, it shall not be competent to the said meeting or to any subsequent meeting, notwithstanding anything contained in clause (f) 3 to dispose, of the same unless at least twenty-five members of the Corporation, inclusive of the presiding authority, are present during such time as the said business or transaction is under consideration and until it is finally disposed of." I cannot consent to this power being given to the Commissioner. It comes to this, that the Corporation is not to be trusted to decide whether a matter is so important as that it should not be disposed of by the number of members present on any particular occasion, though the Commissioner is to be trusted. I will venture to say, that there is no ground for such a want of confidence in the Corporation or for reposing in the Commissioner such unlimited trust. If this clause is carried, we may have such a scene as that of the Municipal Commissioner sending members of the Municipal Corporation away although they may have at-

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*Note 3 :--*Section 37 (f). If at any time during a meeting it shall be brought to the notice of the presiding authority that the number of members of the Corporation present falls short of fifteen, inclusive of the presiding authority, the presiding authority shall adjourn the meeting to some other day, fixing such time and place for the same as he shall think convenient and the business which remains undisposed of at such meeting shall be disposed of at the adjourned meeting or, if the latter should be again adjourned, at any subsequent adjourned meeting whether there be a quorum of fifteen members present there-at or not

- 1 (g) If the Commissioner shall at any time before any business or proposition is finally disposed of at a meeting, certify to the presiding authority of such meeting that the said business or proposition is of special importance, it shall not be competent to the said meeting or to any subsequent meeting notwithstanding anything contained in clause (f) to dispose of the same unless at least twenty-five members of the Corporation, inclusive of the presiding authority, are present during such time as the said business or transaction is under consideration and until it is finally disposed of;

tended the meeting at considerable personal inconvenience. It reminds one of Lord Protector Cromwell sending about their business the commons of Great Britain. I can assent to no such section which would place the Municipal Commissioner over the head of the Municipal Corporation.

Another point in Chapter 2 is a matter of detail, but which I am apt to consider of so much importance that I should like to refer to it even on this occasion. It is dealt with in Section 41 about educational grants-in-aid. Clause 2 of that Section provides that "a school committee may be appointed under this Section to administer the school-fund as defined in Section 120<sup>6</sup> to manage and provide for maintaining and suitably accommodating primary schools which vest in the Corporation or partly in the Corporation and partly in Government, and for affording aid, in accordance with the Government grant-in-aid rules from time to time in force, to private primary schools and for the promotion of primary education generally." I do not know whether I shall be considered by others to be right or wrong but I must say that I do not think that the Government grant-in-aid rules to be by any means the *re-plus ultra* of educational wisdom. We—and when I say "we" I mean the Municipal Corporation—may, perhaps, be able to suggest alterations and improvements in them. But if we cannot as we frequently cannot get Government to see as we do, I do not understand why we should nevertheless be entirely bound by the rules made by Government. This provi-

*Note 5 :—* Section 41 Clause 2 A school's committee may be so appointed under this section to administer the school fund as defined in section 120, to manage and provide for maintaining and suitably accommodating primary schools which vest in the Corporation and partly in the Corporation and partly in Government and for affording aid, in accordance with the Government Grant-in-aid rules from time to time in force to private primary schools and for the promotion of primary education generally.

*Note 6 :—* Section 120 defines "School Fund."

*Note 7 :—re-plus ultra Perfection* : :

sion therefore, seems to me to be in itself unjustifiable and it also betokens a want of confidence in the Corporation.

In the same chapter comes a provision about the appointment of a Deputy Municipal Commissioner. That appointment should, I think be left to the Corporation, although I would not object to the appointment being made by that body subject to the confirmation of Government, as is the appointment of a Health Officer or an Executive Engineer to the Municipality. I come next to section 58 which provides, among other things, for the Municipal Commissioner serving as a member of this Council or of certain local committees. These provisions seem to me to be open to objection. It is admitted that the Municipal Commissioner has already too much work to do, yet by this Bill we give him much more; and proceed further to impose on him a liability to do the work of the Presidency at large, when he is a paid officer of the Municipality of Bombay city. I do not see what equity the Presidency has to entitle it to such service.

I come next to what is probably the most important point in this Bill, relating to the obligatory and discretionary duties of the Corporation. We have in section 62 a large number of matters mentioned as incumbent on the Corporation. And, in the first place, it is said that the Corporation shall be bound to make "adequate" provision for them; but we are not told who is to judge of the adequacy or in-adequacy of the provision made. It is the Corporation that ought to be the judge of that. Again, you find in the enumeration various matters which are dealt with in their respective places elsewhere in the Bill. For instance, take the construction and maintenance of drains. It is the first of the items under Section 62 incumbent on the Corporation. Yet by Section 219 all drains belonging to the Corporation are to be under the control of the Commissioner, and he is to construct such drains as he may consider necessary. In fact he is master of the whole thing. I confess I find it impossible to harmonise sections 62 and 219. And be it remembered, again

that the Corporation, which has asked for various changes in the law, has not asked for any change in this direction. Take, again, the construction and management of water works. Under the old law, this was expressly left to the Corporation, but now we have the Commissioner throughout, and he may do pretty much as he pleases. Look, again, at Section 65, clause (2), which says: "Except in so far as authority is expressly vested by or under this Act in the Corporation or in the Town Council, or in any such committee as aforesaid, and subject, whenever it is in this Act expressly so directed, to the approval or sanction of any of the bodies aforesaid, the duty of carrying out the provisions of this Act vests exclusively in the Commissioner." The key-note of the Bill may be said to be sounded in that clause. The result of it is that the one municipal authority whose powers are deliberately left indefinite in this Bill is the Municipal Commissioner; yet it is his powers, before all others, that ought to be strictly defined. The powers of the Corporation and Town Council, on the other hand, are strictly defined, while, it is the Corporation if any authority, that within the Municipality ought to be omnipotent. I may remark, too, that it is not only the Corporation and Town Council which have their powers limited by this Bill, but even the Executive Health Officer is placed on a lower footing than under the old law. Under that law, he had authority, in special cases, to make reports to the Town Council direct and to exercise some powers independently of the Commissioner. But in the present Bill all his independent authority is absorbed into that of the Commissioner.

I shall now pass over the intermediate sections to come to section 135 which is remarkable as dealing with a matter about which there has recently been some considerable feeling inside and outside the Corporation. Comparing section 135 of the Bill with section 30 of the present Act we find that while under the latter section the Town Council has power to call for all municipal records, under Section 135 of the Bill the Town Council is to

have "access" only to "all the municipal account and to all correspondence relating thereto." Obviously the powers of the Town Council are here considerably curtailed. I do not say that the question is one entirely free from all difficulties. But I certainly do say that this is not a satisfactory mode of dealing with those difficulties. The next section vests the appointment of municipal auditors in Government:—the Corporation no longer appointing them as it has done hitherto. What advantage to the Municipality is to result from this provision I do not know; for I do not understand it to be contended that the audit hitherto has been unsatisfactory. I can quite understand that the Central Government should wish to examine the account of local bodies. I do not see anything objectionable in that and I should probably not have objected to the change had Government not required payment for the audit thus provided for. I need not say more on this point at present, but proceed to the provisions about the annual Budget. The framers of this Bill do not seem to have had it present to their minds that its provisions in regard to the important work of considering the Budget will either deprive members of the corporation of their Christmas Holiday, or make them neglect their most important civic duty. I cannot see why they should be placed in this position. The Budget is, to be in the hands of members of the Corporation no later than the 22 of December they are to proceed to consider the same not later than the 5th of January—a date that often falls before the expiry of the holiday available to myself, for instance, and others connected with the High Court; and before the 15th of January, the taxes are all to be finally determined. I can only say that the lot of man who has the misfortune to be a member of the Municipal Corporation with such duties is much to be pitied.

Section 336 and following Sections relating to building regulations can, in my judgment, be only characterized as providing, not for local self-government, but for auto-cratie government run mad. The Commissioner has power to decide how I shall

build my house, of what materials to what height, what shall be the situation and size of the rooms in it, and after all has been done, whether I shall live in it or not. I will venture to say that auto-cratie government could not be reduced to an absurdity more clearly. When such interference with individual liberty was attempted under bye-laws proposed under the Municipal Commissionership of Mr. Peddar, I was one of those outside the Corporation who took part in the popular protest against it. I have not had time to compare those proposed bye-laws with the regulations proposed in this Bill; but my general idea is that those bye-laws were not more objectionable than these regulations. I will make only one other remark on these regulations by way of illustration of my general objection to them. You may provide by an Act of the Legislature for means of ventilation to all houses, but you cannot by any Act of the Legislature compel the use of such means when provided. We know that there are many houses used by our people where such means though existing are not availed of. Look again at Section 372, clause 2. The occupier of any land is bound to cause dust &c. to be deposited upon a part of his land which the Commissioner may appoint. Why should this be so? If a man places rubbish on any place so as to cause a nuisance to his neighbour the law gives such neighbour a remedy. Why, then, should the Commissioner have power to come and tell me where I am to put the dust and ashes on my land? I confess the thing is beyond my comprehension. Again Section 382 and 383 deal with buildings unfit for human habitation and overcrowded dwellings. Under these Sections, the Commissioner has only got to say the building shall not be used, and the owner who afterwards uses them or allows them to be used becomes liable to a penalty. Under Section 222 of the present Act the Commissioner has no such despotic power. The Health Officer's certificate and the Presidency Magistrate's order are now necessary for such interference with individuals. Under the present Bill the Health Officer and



Presidency Magistrate are both ignored. I do not see what there has been in the every day life of Bombay hitherto to justify such legislation.

I come next to the provisions relating to markets. At present the Commissioner can only establish a market with the sanction of the Corporation and Government. But under the Bill, the Commissioner is the sole authority in that respect. To take another point small in itself, but still of importance, and kindred to this one about the markets. Section 414 prohibits the hawking about of articles of human food without a license from the Commissioner. Under Section 314 the Commissioner may summarily remove from the streets any man creating an obstruction by hawking, and seize his goods. Now I must say that I object to these provisions very strongly. There is no doubt it would be desirable, if it were possible, that all things should be purchased by all people in well-appointed markets in aesthetic buildings, with nice-looking stalls, and everything arranged in the most beautiful and symmetrical style. This would be desirable, if possible. But how does this provide for the poorer classes, to whom it is obviously a very great convenience to have their food supplies brought to their doors by these people who go about hawking their goods. The proposed arrangement belongs, perhaps, to a higher platform of civilization than those people can imagine. They cannot appreciate it; it is entirely foreign to their habits. And on behalf of these poor people, these provisions must be objected to."

The Honorable Mr. Naylor—It simply prohibits hawking without a license being taken out.

The Honorable Mr. Telang:—Yes, but the people affected would belong to the poorer classes, who have no voice to give utterance to their complaints, and no means of getting them redressed. It is easy to imagine the great oppression to which they must be exposed under the operation of such regulations as these.

Section 438 and following Sections deal with sanitary measures to be taken in the event of an outbreak of any dangerous disease. The Commissioner is to take the proper steps in such a case. This is well enough as he is the head of the Executive of the Municipality. But in the performance of his duty he is not to communicate, according to this Bill, with the chief authorities of the Municipality. His communications are outside the Municipality--that is to say, with Government. It ought to be provided that he should also report to the Town Council and the Corporation. Again, Section 516 provides that Government should call on certain Municipal authority to do certain things. This seems to me not the proper mode of proceeding. The Government should address the Corporation and be addressed by or on behalf of the Corporation. The chief Executive Officer or any other Municipal authority should not be dealt with by Government as if he was an independent authority.

I now come to section 474, a long section providing for penalties. This will have to be very carefully considered, for I have noticed some provisions not easy to defend. For instance, if the provisions as to notice of transfer of property under section 148 and 149 are not complied with, a man becomes liable to a fine under section 474. Why should this be so? If notice is not given, the original owner remains liable to the Municipality. That is a sufficient safeguard for the interests of the Municipality. The last point I wish to refer to is contained in section 515. The Commissioner is to take or withdraw from all proceedings against any person for offences under the act &c. The Town Council and Corporation have nothing whatever to do with this. I am not satisfied with this provision. I know it is said that bodies, like the Town Council and Corporation are not the most fit for dealing with such questions. There is some truth in that. But we must not forget that, under the operation of rules similar to those now under notice, the Municipality has actually suffered before now, heavy pecuniary losses. This aspect of the matter, too, is one to which special attention must be paid. I am not in a position to say how the provision before us should

be modified. But I think it necessary that some check on the Municipal Commissioner should be provided.

I do not propose to trouble the Council at this stage of the Bill with any further remarks. I will only say this, in conclusion, that regarding the Bill as a whole, the effect it seems likely to have is to reduce the powers of the Corporation and Town Council, and to enhance those of the Commissioner, not only at the expense of the bodies, but also of the Health Officer as well. In all these respects I think the principle of the Bill is wrong. I admit that we are all anxious to secure the good government of the city, and that what we have to consider is its true interests. I admit that to conserve those interests properly we ought to have strong Executive but to conserve those interests it is not necessary to make the Executive independent of the higher municipal authorities. The Executive ought still to be answerable to the Town Council and Corporation. So far, although we have had the various anomalies, and conflicting jurisdictions, and the laxities of phraseology to which references have been made, still we have worked on the whole successfully. The Municipal Commissioner has been the head of the Executive, no one meddling with him in that respect. The Corporation has retained the province of supervision. The Corporation has in the past been, in fact, only too glad to support the Commissioner, whether it has been consulted before or after any action taken by him. I do not say that the confidence reposed in the Commissioner has not been, in general, fully deserved. But, on the other hand, it is a mistake to suppose that there will ever be any endeavour to stretch unduly the powers of the Corporation. The tendency of this Bill, however, is, when correctly viewed, towards a material abridgement of the Corporation's powers and towards allowing the Commissioner the amplest possible scope. This is not as it should be. It may hereafter happen that we shall get a Commissioner anxious to assert his own powers, and not careful about the due powers of other authorities. Friction will then ensue. If you want to have complete success, define the powers of the Commissioner as well as those of the other authorities fairly. Here

you have restricted, unduly the powers of the Corporation, while the Commissioner's powers are almost unlimited. But it is said that this must be so, because power and responsibility ought to go together. This is true enough, but I say that, under the provisions of this Bill, power and responsibility do not go together. They are completely divorced. The power under Section 219, as I have already pointed out, does not go with the responsibility under Section 62 for identical matters. Again when it is said that the Municipal Commissioner is responsible for the condition of the city, I ask to whom is he responsible? It is to the Corporation he ought to be responsible, and then the proposition about power and responsibility, going together ceases to have any application to the case. My *beau idéal* of Municipal government includes a strong Executive responsible to the Corporation, and an enlightened Corporation watchful over its Executive. Under such a constitution you may give full play to the good sense of the Corporation, which has been, on the whole, pretty well shown during the past fifteen years. But the principles of this Bill are as far from my *beau idéal* as they could well be. And I am afraid that this Bill will not accelerate, but either retard the approach of it. Local Self Government is a sham if no trust is reposed either in the Corporation or the Town Council. I do not say that Mr. Naylor or Mr. Ollivant are actuated by a distrust of popular Government, but their confidence in it is weaker than it should be. If it had been as strong as it ought to have been, many of the provisions of this Bill would have been very different from what they are. If the preeminent position of Bombay, to which reference has been made in the speech of the honorable member, requires a special mode of Government, let us by all means consider that point. If popular Government cannot be trusted to cope with all the necessities of that pre-eminent position, let us abolish the Municipality altogether, and let us have a strong administration, and rule by means of the Governor-in-Council. But if we are to have popular Government, let us have it in a genuine form, with power and responsibility in the hands of those who represent the people. Considering the large ex-

penditure which has been incurred and the great development of the city which Mr. Naylor has described as marvellous, there are grounds, in my opinion, for reposing great confidence in those representatives. There may have been blunders, but these blunders are a necessary part of our municipal education, and are not always absent under autocratic rule. We must be prepared to put up with such occasional blunders to secure eventual good Government.

Such eventual good Government, I hold, is more likely to be achieved under our present law, than under the law as proposed in this Bill. It will, therefore, be my duty to oppose the passing of the Bill, unless it emerges from the select Committee's hand very much altered from its present form. I would sooner have our lax phraseology, our conflicts of jurisdiction, and our numerous anomalies, than scientific legislation, in which all the substance of self Government will be abolished or starved out. I am quite willing to have a strong Executive under a popular Government. But under the proposed Bill we shall have what some people would call a benevolent despotism, but what I should call autocracy slightly tinged with bureaucracy.

I would ask leave to add one word about my friend Mr. Phirozshah. I wish he had been here to day, for he is immeasurably more familiar than I am with the history and present working of our Municipality. But I know that he generally agrees with me. Although he is, of course, not pledged to every thing I have said I may state that on the general principles governing this matter he and I are agreed in opinion."

Lord Reay having mis-understood Mr. Telang's expression "That the Corporation should be an omnipotent assembly," Mr. Telang said. "I should like to offer an explanation with reference to one of my propositions which has been misunderstood. I do not want the Corporation to be omnipotent in the sense supposed. Certainly it should be under supervision ; and I would not object to some restrictions being devised for this purpose. For instance as to buildings, I would not let even the Corporation interfere

with an individual in that respect to the extent proposed in this Bill."

On 7 March 1888 at Council met in Bombay Mr. Telang moved an amendment to the City of Bombay Municipal Bill Section 28 clause 2, which was as follows:—

"At least four days before the day of the poll, the Commissioner shall cause the names of all the persons validly nominated with their respective abodes and descriptions and names of the persons subscribing their nomination papers as proposers and seconders to be published in the Bombay Government Gazette and in the local newspaper" and said—"I move the amendment Your Excellency as to the publications of nominations in the newspapers. This is one of the suggestions of the Corporation and they point out that the term "local newspapers" may be interpreted to mean whole of them. The amendment was opposed owing to its not being given notice of in distinct terms and in time, when Mr. Telang said—"I sent the notice in on Saturday, Your Excellency and that is quite within time according to the rules. I could not have sent in the notice earlier as the Corporation's letter was only despatched on Friday evening, I believe. What I want is that the Corporation's suggestions should be considered before the Bill is passed. Mr. Naylor, the Honorable member in charge of the Bill having said that he would have no objection if Mr. Telang would kindly undertake that before the next meeting on the Bill his additional proposals should be sent in due form to the Secretary in time to be printed Mr. Telang replied—"That depends on when the next meeting may be held." Lord Reay however stated that they were not likely to exhaust the whole matter at their next meeting, which would be on Saturday and the honorable member could easily have the necessary amendments ready for that day, but Mr. Telang replied. "The amendment is not a very important one; it only necessitates the removal of the article "the" in clause 2 of Section 28."

Mr. Naylor and Mr. Mehtha having then pointed out to Mr. Telang that there is a Section explaining this, and that it was

a matter which was cleared up before the Select Committee Mr. Telang said "Yes, I see that is quite satisfactory" and withdrew his amendment.

The Advocate General having proposed that the President of the Municipal Corporation be called Mayor of Bombay, Mr. Telang said. "I was told by an European friend, within the last hour or two, that a mayor would be expected to give various entertainments, which would make the office of mayor a very onerous honor indeed."

The Advocate General proposed that the President of the Corporation should be the Chairman of the Standing Committee but the Honorable Mr. Mehta having expressed that function and qualifications of the Chairman of the Corporation and of that of the Town Council are very different and that the Chairman of the Corporation is elected for performing very different functions from those required to be performed by the Chairman of the Town Council, and that it will be preferable to leave the matter to the discretion of the members to elect whom they like, the Honorable Mr. Telang said—"I take the same view of the matter. I sympathise very much with the Advocate General's desire to minimize friction between the Corporation and Standing Committee. But there are also weighty considerations on the other side. I think the practice, which obtained some years ago and has been recently revived, is a very good one—that the Chairman of the Town Council should introduce in the Corporation the proposals of the Town Council; and especially those relating to the Budget. This practice will have to be discontinued if the Chairman of the two bodies is one and the same person because the chairman of the Corporation does not ordinarily take part in debates, which also I think, is a very proper rule."

The Honorable Mr. Mehta moved to give power to the Standing Committee to appoint out of their own body such and so many sub-committees consisting of such number of persons, and to refer to such sub-committees, for inquiry and report or for opinion, such subjects connected with the exercise of the powers or the performance of the duties of the Standing Committee.

under the act as they think fit on which the Honorable Mr. Telang said :—"I think it is well to remember that there is considerable financial power belonging to the Standing Committee, and I do not think it would be at all desirable to give up to a small committee of that body the power of finally deciding these financial matters. I shall vote against the amendment."

On the subject of the creation of the statutory appointment of the Deputy Commissioner the Honorable Mr. Telang said. "I must make a confession similar to that made by the Honorable Mr. West, namely that I formed an opinion at first somewhat different from the one I hold now. But the change with me has been in an opposite sense to that of the honorable gentleman. When I first sent in my proposals to the honorable mover, the only suggestion I made was the one I brought forward at the first reading of this Bill, viz, that the power of appointing to the office of Deputy Commissioner should be vested in the Corporation and not the Governor in Council. Since then I have come to the conclusion that it is not in the interests of the Municipality even to create this new office and for the reason that there is in the other sections of the Bill ample provision made for meeting the difficulties. I feel myself in perfect sympathy with what has been said by the Honorable Mr. West and the Honorable Mr. Richey as to the necessity of a high officer like the Municipal Commissioner not having his hands too full of current work, and having ample leisure not only for his health's sake, but also for the purpose of enabling him to take a general and comprehensive view of matters elsewhere such as will enable him to adopt them to the working of the system in Bombay. But it seems to me

that we have not to look at section 67 alone though even in that section there are not only, as the Honorable Mr. West pointed out, many provisions of the present Act re-enacted, but also a considerable number of provisions enacted for the first time, by which the Commissioner can transfer some of his work to others,

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*Note 8 :—*Section 67 was drafted to empower municipal Officers to exercise some powers of the Commissioner



and we must also look to section 79 under which provision is made for the Commissioner getting all such assistance as he can require. And I point that section because with reference to the statement concerning the great amount of work in the Municipal Commissioner's Office, I am not satisfied that it is work which is necessarily required to be done by the Commissioner or a Deputy Commissioner. I must confess speaking with great respect of the argument of the Honorable Mr. West in reply to the Honorable Mr. Forbes Adam, that he did not convince me that the argument used by Mr. Forbes Adam was wrong. I know that Bombay is not yet, if I may so say, like an extinct volcano, and that there will be plenty of work for the Municipality to do in future. But I repeat I am not sure that it will be the sort of work for which an officer of the kind suggested by Mr. West would be required. Though with the growing intellectual capacity of the people the result may be as the Honorable Mr. West predicts, and work may increase, still the probabilities are that the work will, for the most part, be such as can be done by officers of the sort contemplated in section 79\*. Again as to responsibility I quite agree that we have to look at moral responsibility, not merely<sup>10</sup> technical responsibility. But in view of Section 57 (2) (b), I think the moral responsibility will in effect be shifted when powers and duties are deputed to the deputy. I would make one further remark. The Honorable Mr. West proposes to change the words "subject to general direction" to "subject to the orders of

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*Note 9 :—*Section 79 (1) The Commissioner shall, as soon as may be after this Act comes into force and afterwards from time to time, prepare and bring before the town council a schedule setting forth the designations and grades of the other officers and servants who should in his opinion be maintained, and the amount and nature of the salaries, fees and allowances which, he proposes, shall be paid to each.

(2) The town council shall sanction such schedule either as it stands or subject to such modifications as they deem expedient, provided that no new office of which the aggregate emoluments exceed rupees three hundred per month shall be created without the sanction of the corporation."

\* 79 :—See Note 9.

*Note 10 :—*Section 57 (2) (b) "The Commissioner shall inform the council of the powers and duties which he from time to time deposes to a Deputy Commissioner."

the Commissioner." The effect of this would be that the officer appointed under Section 79<sup>a</sup> would be quite as good as one appointed under Section 56,<sup>11</sup> and it is much better he should be appointed under Section 79, the Municipal Commissioner passing off his own shoulders whatever was sufficiently un-important to be entrusted to his subordinates retaining to himself only such duties as require the attention of a more experienced and qualified officer. On the whole I am of opinion that this office should not be created. The Corporation does not want it, and has said so over and over again, and I do not see why we should say that such an officer should be appointed." The amendment was lost.

To Section 56 of the Municipal Bill, which was as follows, "The Governor in Council may at any time and from time to time appoint a person to be a Deputy Municipal Commissioner, if after consulting the Council and the Commissioner, it shall appear to him expedient so to do" Mr. Telang moved an amendment so that the Section may stand as follows :—

"The Corporation may at any time and from time to time appoint a person to be a Deputy Municipal Commissioner if it shall appear to it expedient so to do" and said.

"I have a double proposal to make here, either that the appointment of a Deputy Commissioner be made by the Corporation, or that, if the power be retained by the Governor in Council, such power should not be exercised except on the application of the Corporation. There is one point in addition to what has been said in the course of the previous debate which I should here mention. It seems to me that the Governor in Council, however well-informed in reference to municipal matters, must

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(a) See Note 9.

Note 11 :—Section 56 (1) The Governor in Council may at any time and from time to time appoint a person to be a Deputy Municipal Commissioner if after consulting the Council and the Commissioner it shall appear to him expedient so to do.

(2) Every person so appointed shall be subject to the same liabilities, restrictions and conditions to which the Commissioner is subject.

necessarily be, I say it with all respect, much less well-informed than the Corporation. And it appears to me that it is not enough that the Government should merely "consult" the Corporation on the subject, but it is necessary at least that it should only exercise the power on the application of the Corporation. I myself am prepared to go further. I think that the Corporation should itself make the appointment. The Executive Engineer and the Chief Officer of the Health Department are both appointed by the Corporation subject to confirmation by Government, and I do not see why the Deputy Municipal Commissioner should stand on a different footing than the other two officers. I may as the matter has been incidentally referred to, at once disclaim any intention of imputing to the Governor in Council or any one else any love of patronage or nepotism in this matter. But it seems to me that the proper authority for making such an appointment as is now under consideration is the Corporation who should know the exact purpose for which the officer is required and for which he ought to be appointed." The amendment was carried.

Clause (3) of Section 65 was as follows —

"Subject, whenever it is in this Act expressly so directed, to the approval or sanction of the Council or the Standing Committee and subject also to all other restrictions *and limitations* imposed by this Act, the entire executive power for the purpose of carrying out the provisions of this Act vests in the Commissioner."

The Honorable Mr. Telang proposed an amendment that the words "limitations and conditions" be substituted for the words "and limitations" and said—"Your Excellency.—This is principally a change of words. I wish to insert the word "conditions" before "limitations" as bringing out more clearly the necessity, for instance, of a grant of money being made by the Corporation as a condition for the Commissioner's action even in executive matters."

The Honorable Mr. Mehtha had moved that the following (c) clause of Section 65 be omitted. It proposed to give to the Com-

missioner in case of urgency any power given by the Act to the Corporation or the Committee.

Clause (c) 65 section — " In any case of pressing emergency, exercise with the consent of the Standing Committee any power conferred by this Act on the Council or the said Committee, reporting at the Council or the said Committee, as the case may be, when he has done so, the action which he has taken and his reason for taking the same. "

The Honorable Mr. West proposed that the clause should not be omitted but a statutory obligation should be imposed upon the Municipal Commissioner of "*reporting forthwith*" to the Corporation any exercise of such power by him and said that there was no room left for abuse, when the Honorable Mr. Telang replied as follows "I do not quite understand how the arguments of the Honorable Mr. West support the section as it stands, for although the condition is in his amendment made more precise the power is not diminished. And the power extends not merely to the expenditure of some municipal money but to the exercise of any of the authorities of the Corporation or the Standing Committee. It is admitted you are providing for an emergency which may occur but once in a life-time ; yet the clause is one which covers events that may occur many times in a life-time. It seems to me that the power would in every probability be mis-used. The Legislature should not thus put the Commissioner in possession of powers which are very extreme. Supposing urgent measures are wanted and five lakhs is required, there is plenty of time to bring the matter before the Corporation. A meeting might be held at three day's notice to authorise what ever was necessary. All the five lakhs cannot have to be spent before such an urgent meeting can be held."

It was proposed to empower Municipal Commissioner to give any Municipal officer a power to.

(a) Take or with-draw from, proceedings against any person who is charged with.

(1) Any offence against the Municipal act.

- (2) Any offence which affects or is likely to affect any property or interest of the Council or the due administration of the Municipal Act.
- (3) Committing any nuisance whatsoever.

The Honorable Mr. Telang moved to omit the above provision and said.

"This clause gives the Commissioner liberty to authorise his subordinates exercising powers which should not be entrusted to any subordinate but should be exercised by the Commissioner only. The Corporation think it should be struck out." The Honorable Mr. West having explained to Mr. Telang, that endless inconvenience would arise if the power of delegation is not vested in the Commissioner the Honorable Mr. Telang withdrew the amendment saying, "I see the force of the argument and will withdraw my amendment."

It was proposed to empower the Municipal Commissioner to create new offices of which the aggregate emoluments exceed rupees *three* hundred per month with the sanction of the Corporation, but Mr. Telang moved to give the Commissioner power to create new offices of which the emoluments did not exceed *one* hundred only and said,

"Your Excellency—The amendment I propose is in reference to the creation of new officers in the Municipal establishment. As the section stands, no new office of which the aggregate emoluments exceed rupees three hundred per month can be created without the sanction of the Corporation. I suggest that the limit be rupees 100 instead of rupees 300. There are not many of ficers in the various Municipal departments to whom this regulation as it stands can apply. I belive there are very few who are getting salaries above rupees 300 per month. But it is necessary, I think that in the matter of the sanction of the Corporation, the limit should be lower than rupees 300. I speak under correction, but I belive that even the Government of Bombay cannot create offices the emoluments of which are Rs. 200 per month or upwards without the sanction of the Govern-

ment of India and I do not see why our Municipal Commissioner should have larger powers."

The Honorable Mr. West suggested the limit of 200 rupees which was adopted.

The Municipal bill proposed that on the written requisition of a secretary to Government, the Commissioner might at any time undertake the execution of any work certified by such secretary to be urgently required in the public service and for this purpose might temporarily make payments from the municipal fund, so far as the same could be made without unduly interfering with the regular working of the Municipal administration. The Honorable the Advocate General moved that such requisitions of the Government should be addressed to the Standing Committee and the Commissioner should undertake the execution of the works with the sanction of the Standing Committee.

The Honorable Mr. Naylor raised a question of principle that it was wrong that we should ask the Standing Committee to determine whether a requisition made by Government should be complied with or not. If a requisition came from Government, he said, in such urgent cases then the section surely meant that the work should if possible, be done by the Commissioner without any delay or dissent whatever.

The Honorable Mr. Telang spoke on this amendment as follows—"Your Excellency—The Honorable Mr. Naylor having raised the question of principle I am bound to say that on the principle my opinion agrees with that of the Honorable the Advocate General. I am content that the section should stand in the form in which it is, merely as a matter of convenience, and having regard to the necessities of the case which have been pointed out by the Honorable Mr. West. As originally drafted, the section appeared to me very objectionable on grounds of principle. But a deviation from principle in such a case as this may be justified by the necessities which may arise, and may be allowed in view of the precautions which are taken in Sub-clause (2), under which the Commissioner is bound to report forthwith to the Corporation. I may point out that the Corporation do not object

to the form in which the Section now stands. All they say is that in an adjustment of account between the Corporation and the Government, Government should apply the same principle which is applied by them to the work they obtain from other bodies—I take that to be a matter of course which need not be provided for in express term.”

The bill proposed that the Standing Committee should, on or as soon as might be after the 10 day of November consider and frame budget-estimate of the Municipal finance and that the Commissioner should forward a printed copy of the budget to the Municipal Councillors not later than the 15th day of December. The Honorable Mr. Telang moved to change the latter date to 1 December and the former to 1 November. The bill also proposed 26th day of January as the date for fixing rates of taxes and the Hon. Mr Telang proposed to change it to 31st.

He said— ” Your Excellency, the proposals embodied in the amendments now before the Council are in accordance with the suggestions of the Municipal Corporation and in substance the same as I proposed in the Select Committee. The Corporation point out that the person most affected by the change of dates suggested is the Municipal Assessor and he has no objection to the suggestion made; therefore there is no need to apprehend any practical difficulties arising through the extension of time. The result the amendment if accepted will be that the Town Council or Standing Committee will commence the consideration of the Budget on the first of November instead of the tenth, and the Budget so considered and passed by the Council will be in the hands of the Corporation on the first of December instead of on the 15th and the rates and taxes proposed in the Budget will be finally sanctioned by the 31 January instead of the 25th. That is to say the Council or Standing Committee will begin deliberating on the Budget nine days before the present date and the rates and taxes will be sanctioned a week later—I do not think these changes are revolutionary; there will be no inconvenience to any one if they are made; and I think the Council will be exercising a wise discretion in accepting the proposal.”

The Hon Mr. West suggested a compromise by fixing the dates as the 10th November and the 31st January which Mr Telang accepted and the amendment passed.

The Municipal Bill had proposed the following law on the subject of the payment to be made to the Municipality in lieu of the general tax by the Secretary of State for India in Council.

*Section 143 of the Bill*—"The Secretary of State for India in Council shall pay to the Council, in lieu of the general tax from which buildings and lands vesting in him are exempted by clause (b) of section 142, such annual sum as a person from time to time appointed by the Governor in Council, with the concurrence of the Council, may having regard to all the circumstances of the case determine to be fair and reasonable."

The Honorable Mr. West proposed that the following section be substituted for section 143-viz.

"143 (1) The Secretary of State for India in Council shall pay to the Council annually, in lieu of the general tax from which buildings and lands, vesting in him are exempted by clause (b) of section 142, a sum ascertained in the manner provided in subsections (2) and (3).

(2) The rateable value of the buildings and lands in the city vesting in the Secretary of State for India in Council and beneficially occupied in respect of which but for the said exemption general tax would be leviable from the Secretary of State for India in Council, shall be fixed by a person from time to time appointed in this behalf by the Governor in Council, with the concurrence of the Council. The said value shall be fixed by the said person with general regard to the provisions hereinafter contained concerning the valuation of property assessable to property taxes at such amount as he shall deem to be fair and reasonable. The decision of the person so appointed shall hold good for a

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1. Clause (b) of Section 142. "The general tax shall be levied in respect of all buildings and lands in the city, except buildings and lands vesting in the Secretary of State for India in Council or in the Council in respect of which the said tax if levied, would under the provisions hereinafter contained be primarily leviable from the Secretary of State for India in Council, or the Council respectively."



term of five years subject only to proportionate variation, if in the meantime the number or extent of the buildings and lands vesting in the Secretary of State for India in Council in the city materially increases or decreases

(3) The sum to be paid annually to the Council by the Secretary of State for India in Council shall be eight-tenths of the amount which would be payable by an ordinary owner of buildings or lands in the city, on account of the general tax on a rateable value of the same amount as that fixed under subsection (2)"

On the above proposition, the Honorable Mr. Telang spoke as follows :—

"The question which has been now brought before the Council by the Honorable Mr. West is a question which has been a source of considerable trouble to this Council in times past. Many years ago, when the Municipal Act of 1872 was under consideration, the question was raised whether it was at all within the power of the Council to assess for municipal purposes buildings held by the Secretary of State. That question is not now before the Council and I will not therefore say anything in reference to it. I have heard what the Honorable Mr. West has said with regard to the matter under consideration, and thereare, it seems to me, one or two points which are not quite satisfactorily settled by the honorable member's observations. In the first place I do not quite gather from the remarks of the honorable member why in fixing the rateable value as distinguished from the deductions to be allowed for, he proposes that in respect to Government buildings there should be a special person appointed to assess the value upon which taxation shall be levied. The original fixing of the assessable value on Government buildings and all others buildings in the city should it seems to me, be made on such a basis that equal justice may be meted out to the poor ratepayer and the wealthy central government and this can best be secured if the assessment be made by one and the same officer. I do not quite understand why government is in this respect to stand on a different footing from the ordinary house-

holder. With regard to the proposed reduction of eight-tenths on Government property, I conceive there is a great deal in the arguments adduced by the Honorable Mr. West but some thing must also be taken into account against it. It is to be remembered that it is not only government which builds on other than purely economical principles. Private house-holders also build some-times on other than economic principles. But no deduction is made on account of the æsthetic appearance of their buildings, which may be equally pleasing to the eye with those large Government buildings to which the Honorable Mr. West refers. Yet surely these houses in which æsthetics receive as much attention as accommodation or economy should meet with similar consideration. Another aspect of the question which has to be considered is this. The Central Government is the Government of the whole presidency, and if that Government parts with some of its power in certain areas in favor of Local Boards, the question is how much it should part with, at the same time, out of the general revenues derived from the whole presidency. Looking on this subject with this point of view I cannot see how this deduction is to be justified. It is a question which to my mind is not easy to solve. I speak subject to correction but I understand that the direction in which the practice in England has in recent years tended in the matter of local rating of property belonging to the Central Government—and that is the way the matter should be looked at—is towards an assimilation of Government and private property. On principle—I should prefer the amendment to the section as it stands. But I throw out these suggestions merely in order that the Honorable Mr. West and the other honorable members may see how far there is anything practical sound and in them.'

The Municipal Bill had proposed following law on the subject of the form of notice of transfer &c. of premises assessable to property taxes. "Sub-section 2. The notice shall be accompanied whenever the Commissioner shall deem fit so to require, by the instrument of transfer, if any, and by a certifi-

cate that public notice has been given of the transfer by beat of *bataki*."

On which the Honorable Mr. Telang remarked "I see no reason why the Commissioner should require to see the instrument of transfer." The Honorable Mr. Naylor concurring with the Honorable Mr. Telang proposed to get over the difficulty by moving that for the clause, the following should be substituted.

"On receipt of any such notice, the Commissioner may, if he thinks it necessary, require the production of the instrument<sup>12</sup> of transfer, if any or of a copy thereof obtained under Section 57 of the Indian Registration Act 1877". The Honorable Mr. Telang then withdrew his amendment in favor of the latter.

The Bill gave powers to the Commissioner to carry any Municipal drain through, across, or under any cellar or vault which might be under any street and, after giving reasonable notice in writing to the owner or occupier into, through or under any land *whatsoever* within the city or for the purpose of outfall or distribution of sewage, without the city. The Honorable Mr. Telang proposed an amendment to give the Municipal Commissioner power to carry drains under land "uncovered by any building intended to be used as a dwelling" only and not under any land "whatsoever" as proposed in the Bill and remarked—"The object of this amendment is obvious on the face of it. I think the Section as it stands most objectionable. No public drain should be allowed to pass under any building used or intended to be used as a dwelling. By a subsequent section, no one is allowed to build over a Municipal drain and that is enough section why the Municipality should not be allowed to run a drain under a building already existing. The preservation of health would be rendered impossible."

The amendment was lost by the casting vote of the President.

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*Notes.* 12—Section 57. of the Indian Registration Act 1877.

This Section empowers Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

The bill proposed to give power to the Commissioner to close permanently any public drinking fountains, tanks, reservoirs, cisterns, pumps, wells, ducts and works for the supply of water for the gratuitous use of the inhabitants of the city, with the approval of the *Standing Committee* but on the suggestion of the Honorable Mr. Telang the sanction of the *Corporation* has been made necessary, instead of that of the *Standing Committee*.

In the matter of the cutting off private water supply, power was given by the Bill to the Municipal Commissioner alone but on the motion of the Honorable Mr. Telang the exercise of such power has been made subject to the sanction of the *Standing Committee*. Mr. Telang in moving his amendment on the subject said.

“Your Excellency.—It has been said that if certain matters were left to the *Standing Committee* there would be canvassing of an objectionable character, but in respect to the matter now before us, at all events I do not see how that could be. On the contrary I think it undesirable that the Commissioner should exercise such powers as he is here empowered to exercise without first obtaining the sanction of the *Standing Committee*.”

The amendment was accepted.

The bill proposed to give the Municipal Commissioner discretionary power as to the prescribing of the regular line of a street, but on the motion of Mr. Telang an obligation has been imposed on the Commissioner to prescribe such line.

The bill proposed to give the Commissioner unrestricted power to require by written notice the owners of premises fronting or adjoining private streets if such streets be not levelled, metalled or paved, sewered, drained, channelled and lighted to the satisfaction of the Commissioner to level, metal, or pave, drain and light the same in such manner as he should direct, but on the suggestion of Mr. Telang the exercise of this power was made subject to the sanction of the *Standing Committee*.

The bill proposed the following section on the subject of hawkers selling goods in the street, and squatting on the streets and exposing goods for sale; causing obstruction and nuisance to

the people who wish to go into the markets. *Section—314 (1).* No person shall hawk goods for sale in any street or squat on any street for the purpose of selling goods, or expose goods for sale in any street in such a manner as to cause an obstruction in such street.

(2) *The Commissioner may summarily remove any person who contravenes this section.*

The Honorable Mr. Telang moved that sub-section 2 be omitted and said, "Your Excellency, this subsection is capable of being worked in practice in a very oppressive manner and the people who are likely to suffer are those who can hardly even hope to obtain any redress or indeed even to demand it and I should prefer to stike out the whole sub-clause."

"It must be remembered that the operation of the section is not in terms confined to the vicinity of Municipal markets but extends to the whole city. The useful part of the section is covered by other enactments and it is almost better to remove the whole section."

The amendment was carried.

The bill proposed that the erection of any new building on any site previously unbuilt upon in any part of the city in which the position and direction of the streets likely to be required in the future had not been laid down or determined, should, with the assent of the Standing Committee be disapproved by the Commissioner unless the site proposed for such building was in the opinion of the Commissioner such as with reference to the positions occupied by the buildings if any, already existing in the neighbourhood would admit of the construction in the future of one or more new streets convenient for the occupiers of all the buildings in the neighbourhood and for the purposes of drainage watersupply, and ventilation. The Honorable Mr. Telang moved that the following proviso be added to clause (6) viz "provided that any person whose building is so disapproved, may by written notice to the Commissioner require that the position and direction of the future streets in the vicinity of his intended building be forth-with laid down and determined and if such requisition be

not complied with within three months from the date thereof may subject to all other provisions of this act applicable thereto proceed with the erection of his building."

The Honorable gentlemen said—Your Excellency—Under the section as it stands there is no limit to the time during which the Commissioner may leave the position and direction of the street undetermined and this is hard on the individual owner. It seems to me the proviso I have here drawn up would meet the case."

The amendment was agreed to with the substitution of six months for three.

The Bill proposed to give power to the Commissioner with the approval of the Standing Committee to cut into and lay open for the purpose of inspection any buildings or works commenced contrary to the law prescribed as regards "*commencement of such works if in the opinion of the Commissioner it shall be necessary to ascertain the fact of the contravention of such law.*" The Honorable Mr. Telang moved to lay down that *there should be reasonable grounds for suspecting that the works were done contrary to the Municipal law and mere opinion of Commissioner was not sufficient.* He also moved to add the following provision, which was not drafted in the Bill.

"If it shall thereupon be found that in the erection of such building or the execution of such work, nothing has been done contrary to any provision of this Act or of any byelaws made under this Act at the time in force and that nothing required by any such provision or bye-law to be done has been omitted to be done compensation shall be paid by the Commissioner to the person aforesaid for the damage and loss incurred by cutting into, laying open, or pulling down the building or work."

The amendment was accepted.

The Bill proposed to give the Commissioner power *at any time within 6 months after the completion of a building* by written notice to specify any matter in respect of which the erection of such building or the execution of such

work might be in contravention of any provision of the Act or of any bye-law made under the Act at the time in force, and to require the person erecting or executing or who had erected or executed such building or work, to cause any thing done contrary to any such provision or bye-law to be amended or to do any thing which by any such provision or bye-law might be required to be done but which had been omitted to be done. The Honorable Mr. Telang moved that "or any time within 6 months after the completion of the building be omitted" and said "Your Excellency—The provision by which the Commissioner is authorised at any time within six months after the completion of a building to have it opened for the purpose of inspecting it and ascertaining whether or not any provision of this Act has been contravened, seems to give too long a time. There is enough time to inspect it while it is in course of erection and it seems likely to occasion much inconvenience not only to the owner but also to the occupier, if the Commissioner chooses to open it up six months after completion."

The amendment was withdrawn and "three" was substituted for "six" in the Section.

The Bill proposed that no person should, without or otherwise than in conformity with the terms of a license granted by the Commissioner in that behalf keep upon a private market.

At the suggestion of the Hon. Mr. Telang the following words were added to this clause "and shall not cancel or suspend any such license without the approval of the Standing Committee."

The bill proposed the following section on the subject of the prohibition of sale in unauthorised private markets.

*Section 408.* No person who knows or has reason to know that any private market has been established without the sanction of the Commissioner, or is kept open after a license for keeping the same open has been refused, cancelled, or suspended by the Commissioner, shall sell or expose for sale therein any animal or article of food.

The Hon. Mr. Telang proposed to omit, the words "or has reason to know" and said—"Your Excellency—I propose that these words be omitted. It seems quite unnecessary, and besides also unreasonable, to punish any person, unnecessary because you can punish the chief offender, who must "know" and not merely "has reason to know." The amendment was carried.

The Advocate General had proposed an amendment to the law proposed in the bill on the subject of "setting back buildings to regular line of the streets" on which the Honorable Mr. Telang said "Your Excellency. My sympathies are most strongly in favor of the amendment of the Honorable the Advocate General. This is one of the

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provisions of this Bill the tendency of which to my mind, is adverse to the interest of the individual citizen, and looking at the question from that point of view I must say I am very much dissatisfied with the proposal which the Honorable Mr. Naylor says has probably received the greatest attention of any part of the Bill. I have given some attention to this section, and I find the Honorable Mr. Naylor and I look at it from very different stand points Doubtless the framers of the Bill looked at it from the executive point of view with perhaps, a too exclusive regard to the improvement of the city, and sometimes were prepared to ride rough-shod over the rights, of private individuals; whilst I have always maintained that the interests of private individuals should be most fully considered in this desire for the improvement of the city, I am not prepared to concede that in such circumstances as are referred to in section 296 the community at large should have the right to interfere with the interest of the private individual; and as to what the honorable member says about the difficulty, of calculations being made in cubic feet I do not see that there is any trouble at all comparable for one moment with the trouble the private owners would be put to, and in many cases without any possibility of appeal under the other system. The honorable

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*Note 13* Section 296 of the Bill drafted by the Honorable Mr. Naylor is on the subject of setting back buildings to regular line of the street.



member points out that the clause as it stands has existed for a considerable number of years, and considerable improvement in the streets has been effected. The Council on the other hand is also bound to consider that there has been a considerable amount of oppression upon individuals and that there has been complaints which have elicited from the Judges observations not at all favorable to the law as it stands. It is the duty of the Council to provide that the law shall not be so stringent. The tendency of course has been to get as much out of the private owners as possible. But this I think is a mistake. I must say that in this matter my sympathies are with the individual as against the community, except in exceptional circumstances—and these exceptional circumstances are amply covered by the amendment of the Honorable the Advocate General."

"The question here is as between the Corporation on the one side and the private individual on the other. On this question I should attach much less weight to the views on the other points we have been dealing with."

The amendment was carried.

The bill proposed—

(Section 346—2) "No such building which abuts on a street of a less width than fifty feet shall without the written permission of the Commissioner, be erected to a greater height than one-and-a-half time the width of the street it abuts on, or three times the width of the building."

The Honorable Mr. Telang moved that this clause be omitted—and said—"Your Excellency. I propose to omit this clause as I think it may operate very harshly and to the injury of the class of people for whom it is intended. A certain limited amount of accommodation only exists in this island and there is a very limited amount of space on which to build. I see the clause is based upon the Metropolitan Management Act. I do not know much about the matter except from books but I was reading an article the other day by Miss Octavia Hill in which she said that Londoners could hardly get a view of the sky at all unless they

went away from London. We need not fear that the building of high houses here will have that effect at least for many years to come. What I most fear is that the result will be to decrease the accommodation available for people who require accommodation which is very undesirable in the interests of the whole city. It is on this account I move the amendment.

It was explained to the Honorable Mr. Telang by H. E. the President and Mr. Forbes Adam that owners with a view to increased receipts would be tempted to build higher than is consistent with the requirement of public health, and that it is necessary to protect the poorest class of lodgers; the Hon. Mr. Telang said, "I will withdraw the amendment. I feel the force of what has been said. I had been guided by the fact, which is also one not without weight of the increasing number of people coming to Bombay and the want of available accommodation."

The Hon. Mr. Telang moved to omit the subsection (2) of section 461, which was as follows.

*Sec. 461.* Any person who fails to comply with any provision of sub-section 1, may be detained in custody until he complies there with. (The subsection referred to in the clause makes it obligatory to fill up blank schedules and returns by persons at whose buildings or places of residence they are left )

He said, "Your Excellency, I am afraid of the operations of this subsection and do not like it to remain on the Statute Book. I would prefer that it should be taken off. The punishment provided seems to me too heavy."

On Sir Raymond West's suggesting to retain the sub-section by adding to it the words "or the requisite information is otherwise obtained." The Hon Mr. Telang accepted the suggestion.

The Honorable the Advocate General had proposed an amendment in section on "complaints concerning nuisances."

The object was to make a provision that nothing in the Municipal Act contained should interfere with the right of any person who may suffer injury or whose property may be injuriously affected by any act done in the exercise of any power conferred

by sections <sup>14</sup>222, <sup>14</sup>242, <sup>14</sup>243, <sup>14</sup>244, or <sup>14</sup>371, to recover damages for the same.

The Honorable Mr. Naylor opposed the amendment on the ground that the Municipal Bill did not deprive a person to make a reasonable claim for damages, if any act of the Commissioner produced such and on the supposition that it was very inexpedient to insert any thing which would directly induce people to go into Court against the Commissioner.

On this the Honorable Mr. Telang said—"Your Excellency-I think the Honorable Mr. Naylor is wrong in his interpretation of the amendment proposed by the Honorable the Advocate General and his argument is therefore not entitled to weight. That amendment does not give a new right of action but is intended to save alive such a right if it exists, notwithstanding the provisions of this Bill. No damages ought to be claimable in case of the erection of a dustbin and probably none will be awarded on the principle *de minimis non curat lex*. But take the case of a receptacle for dead animals. It may be necessary to set up such a receptacle in a particular place, but it is only fair and equitable that the general body of citizens shall pay some compensation to the individuals who suffer in consequence."

The amendment was carried.

The Bill proposed the following law on the subject of the powers of Government to provide for performance of duties in default of any municipal authority.

Section 516.—(1) If upon complaint being made to him and after such inquiry as he thinks fit to make, it shall at any time appear to the Governor in Council that any of the provisions of

Note:—

14 Section 222—relates to alteration and discontinuance of drains.

Section 242—relates to affixing of pipes for ventilation of drains & ca

Section 243—relates to the appointment of places for emptying of drains and disposal of sewage.

Section 244—relates to the provision of means for disposal of sewage.

Section 371—relates to the provision and appointment of receptacles depots and places of refuge &c.

15

Sections 62, 63, 134, 223, 438 and 442, have not been or are not being duly carried out or enforced by the *municipal authority whose duty it is to carry out or enforce the same* the Governor in Council may make an order, prescribing a period within which such provisions shall be carried out or enforced by the said authority :

(2) Provided that except in any case which appears to the Governor in Council to be one of emergency no such order shall be made until after the expiry of one month from the date of service of a written notice on such *municipal authority* requiring cause to be shown why such order should not be made, nor until the cause, if any, so shown has been considered by the Governor in Council,

(3). If within the period prescribed in an order made under subsection (1), the provision is not carried out or enforced, the Governor in Council may appoint some person to carry out or enforce the same and may direct that the expense of carrying out or enforcing such provision, together with such reasonable remuneration to the person carrying out or enforcing the same as the Governor in Council shall determine and the costs of the proceeding under this section shall be paid out of the municipal fund.

The Hon. Mr. Telang moved that the word "Council" be substituted for the words "municipal authority whose duty it is to carry out or enforce the same." and that similar corrections be made throughout the section," and said.

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"Your Excellency—Under Section 65, it is clearly laid down that the municipal Government of the city is vested in the

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Note 62.—Relates to matters to be provided for by the Corporation.

Section—63. relates to the share of the expenses of the police of the city to be paid by the Corporation.

Section—134. relates to the readjustment of income and expenditure to be made by the Corporation during the course of the official year whenever necessary.

Section—223. relates to cleansing drains.

Section—438. relates to special sanitary measures to be taken by the Commissioner on the outbreak of any dangerous disease.

Note 16 Section 65—Lays down functions of the several Municipal authorities.

Corporation therefore no communication concerning municipal Government no matter in what department ought to go from the Governor in Council except to the Corporation. The Municipal Commissioner is the head of the executive and may have to carry out such works as Government may require to be carried out. But communications should be made by Government to the Corporation and when it is a matter which falls within the functions of the Commissioner the instructions should be conveyed to him through the Corporation. Although executive functions may be concerned, still the communication should proceed through the Corporation. The Section as it stands is not consistent with the scheme of the Bill and it is because of that my amendment was suggested."

"In Section 62, the Commissioner is not referred to. The duties there enumerated are stated to be the duties of the Corporation, and it seems to me that there is nothing wrong in insisting that with respect to those duties Government should send its communications to the Corporation."

"I would have no objection to its being provided that the Corporation should pass on to the Commissioner forthwith any communication it receives from Government about executive work."

The Honorable Mr. Naylor proposed a counter-amendment to the effect that if the Governor in Council thinks fit, he will serve a notice upon the Commissioner as well as upon the Corporation, whenever he is satisfied that the blame falls partly on the Corporation and partly on the Commissioner.

The counter-amendment of the Honorable Mr. Naylor was put to the vote, with the result that it was carried by the casting vote of His Excellency the President.

The question then arose as to whether the amendment of the Honorable Mr. Telang can coexist with the one which was just carried and the following interesting debate took place in the Council.

**The Honorable Mr. Naylor**—"The amendment of the Honorable Mr. Telang cannot co-exist with the one which has just been carried and will, I presume not be put."

**The Honorable Mr. West**—"The amendment of the Honorable Mr. Naylor was on an amendment of Mr. Telang's. By it new words are struck out. That procedure seems right."

**The Honorable the Advocate General**—"I do not think that quite applies here."

**The Honorable Mr. West**—"I would submit to Your Excellency that the adoption of the one amendment involves the rejection of the other as inconsistent."

**The Honorable Mr. Telang**—"Supposing it had been lost, then the question would have still lain between my amendment and the section in its original form. The vote now taken only decides the question as between the original section and the amendment of the Honorable Mr. Naylor. My amendment has not really been voted upon yet."

**The Honorable Mr. West**—"The rules of the House of Commons would, I think, settle the point as I have said."

**The Honorable the Advocate General**—"I think not; the vote was between the amendment and the original form, and now it should be between the other amendment and the original form of words."

**The Honorable Mr. P. M. Mehta**—"The two amendments have not yet been pitted against each other—It is conceivable that a member may prefer Mr. Naylor's amendment to the section as it stands, and Mr. Telang's to both."

**The Honorable Mr. West**—"The other amendment is merely to negative this and you cannot reject what you have just adopted."

**The Honorable Mr. Forbes Adam**—"Would it not have been proper to have put Mr. Telang's amendment first and Mr. Naylor's afterwards."

**The Honorable Mr. West**—"I think the general rules of public assemblies are to the contrary; you put an amendment on an amendment first as the more convenient course."

**His Excellency the President (Lord Reay)**—The words of the Honorable Mr. Telang's amendment are contradictory to the words we have just accepted, and the members who have voted for the Honorable Mr. Naylor's amendment could not vote for the Honorable Mr. Telang's. A vote on the latter would therefore be nugatory.

**The Honorable the Advocate General**—The only course that I can see is to bring the matter forward in the third reading.

I had an amendment to the same effect to section 516,<sup>17</sup> that in section 516, line 21, the words "such Municipal authority" be omitted and the words "the Corporation" inserted in lieu thereof.

The question does not appear to have been raised afterwards.

**The Honorable Mr. Naylor** proposed to enact that "on receipt of any such requisition, the Commissioner shall forth-with forward a copy there-of to the corporation who shall be bound to take steps, if any be necessary, for enabling the Commissioner to comply there-with, without prejudice to other claims on the Municipal fund, if within fourteen days from the delivery of the requisition to the Commissioner, the same is not complied with."

**The Honorable Mr. Telang** said—"It appears that this elaborate circumlocution is an attempt to avoid the assertion that the Commissioner is subordinate to the Council. That being so, I shall decline to accept the amendment. I am not prepared to accept any compromise or any section which goes on the basis that the Commissioner is not subordinate to the Council."

**The Honorable Mr. Richey**—What section makes him?

**The Honorable Mr. Telang**. Sections 65 and 66, not to mention others, make it clear that he is subordinate, for he cannot carry on any work unless the Corporation sanctions it and provides the money."

**The Honorable Mr. Richey**—But there is something above "except as in this act otherwise provided."

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*Note. 17*—Section 516. Relates to the power of the Government to provide for performance of duties in default of any Municipal authority.

The Honorable Mr. Telang—He is subordinate, for he carries works laid down by the Corporation and no others.

The Bill proposed the following law on the subject of the power of, Government to call for extracts from Municipal proceedings &c. "*Section 524.* The Governor in Council may at any time call upon any Municipal authority to furnish him with any extract from any proceedings of the Council or Standing Committee or of any committee constituted under this Act or from any record under the control of such authority and with any statistics concerning or connected with the administration of this Act ; and the Municipal authority so called upon shall furnish the same without unreasonable delay."

The Honorable the Advocate General moved that the words "any Municipal authority" be omitted and the words "Corporation" inserted in lieu there—of in the section, saying that he thought it better that the Government should address the Corporation directly.

The Honorable Mr. Naylor then in order to meet the views of the Honorable the Advocate General proposed to adopt the language of the clause in the Letters Patent of the High Court which rendered it obligatory on the Honorable Chief Justice and Judges of that Court to comply with requisitions from Government saying that the Corporation would perhaps not object to be placed on the same footing, in this respect as the Chief justice and the Judges of the High Court.

The amendment of the Honorable Mr. Naylor was to the following effect.

"The Corporation, the Standing Committee and the Commissioner shall comply with such requisitions as may from time to time be made by the Governor in Council for extracts from proceedings or records or for statistics concerning or connected with the administration of this Act, in such form and manner as the Governor in Council shall deem proper."

The Honorable Mr. Telang said "With regard to the Chief Justice it was said in a well known document that he is only



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*primus inter pares*. That phrase is certainly inappropriate as applied to the three authorities in the proposed section."

The Honorable Mr. Naylor proposed to strike out the words "or Standing Committee" when the Honorable Mr. Telang said—"I should not be prepared to accept that."

On the Council dividing the Honorable Mr. Naylor's amendment was lost.

Speech of the Honorable Mr. Telang on the third reading of the City of Bombay Municipal Bill—Your Excellency—When the important measure before the Council was read a first time I ventured to express my opinions and feelings with reference to it without reserve and in a way which was generally understood as it certainly was intended to convey some what a severe criticism upon the Bill. At the same time I expressed my confidence and my hope that in its later stages that Bill would be so improved as to be become acceptable to those whose Municipal Government it was to regulate, and that both the Corporation and the public of Bombay would find that in the end the Bill was no longer as objectionable as in the form in which it was originally introduced. I am very happy to be able to say that the later history of this measure has fully justified in my judgment the confidence and hope I then expressed. In its progress through the Select Committee it was, in my opinion, very considerably improved and I think it has been still further improved in the course of the detailed consideration before the full Council. On the occasion of the second reading I was so satisfied with the improvements made in the Bill and I felt so much confidence that the momentum of the Council so to speak, was in the direction of further amendment that I was content to give a silent vote. But now we have reached the final stage, I may express my belief that upon the whole, and not withstanding certain defects and short-comings and notwithstanding deviations in some sections from the principle which has been accepted in other sections and not withstanding also individual provisions which I would still see amended I am content to

accept this Bill as for the present a sufficient measure of advance in local self-government for I am a believer in the general wisdom of the maxim that we ought to hasten slowly. There are still one or two points of some importance on which I hope a great advance will be made when the Municipal Government of Bombay has again to be considered by the authorities. I am not a believer in finality in these matters. Like *Oliver Twist* we must always be asking for more, and I hope Government will always be ready to give us more. Looking at the specific sections of the Bill, with reference to which I made some special remarks on the first reading, I find that nearly every one of them has been rendered less objectionable either by the action of the Select Committee or the Council itself and the change in every case has been in the direction which I desired to go. On that occasion I endeavoured to deal with all the more important features of the Bill. I dare say, some points were omitted, but most of those which struck me as being really important I alluded to. I do not know whether the Honorable Mr. Naylor will concur in my views as to their improvements; perhaps not; but in my opinion the alterations are for the better; and now the measure is much more satisfactory to myself and much more in accordance with those principles which I should like to see developed more fully in the Municipal Government of Bombay as years go on. There is one other observation which I am particularly anxious to make. There has been a considerable feeling in reference to this Bill outside the Council as is only natural and as I think also desirable. A great deal of enthusiasm is felt and considerable interest taken in the deliberations of this Council, but there has been slight misunderstanding in reference to the Bill as it affects the position of the Municipal Commissioner. This is due probably to the view which the Honorable Mr. Naylor takes of it—though I am not prepared to coincide with him, that the Municipal Commissioner is not the servant of the Municipality. But, in my opinion he clearly is the subordinate of the Corporation, and that is the proper position for him to occupy. I am not in the least anxious that the Corporation should have anything to do with purely executive matters, and as regards the

opinion of the Honorable Mr. Mehta and myself upon that point I hardly think that the Honorable Mr. Naylor fully appreciated it when he delivered what the Honorable the Advocate General called a second reading speech, and went elaborately into the respective functions of the Corporation and the Commissioner to prove that those of the latter ought to be purely executive. I am almost inclined to think that the Honorable Mr. Naylor, having thrown overboard the scheme of executive Committees still seems inclined to cast a longing lingering look behind where-as we who have always objected to that scheme have no desire to go back to it in any form whatever. Mr. Phirozshah and myself are most anxious that there should not be any interference with the executive functions of the Commissioner. We only want that it should be subject to the general control of the Municipal Corporation and that is substantially provided for in the present Bill. I am not prepared to admit that under the sections of the Bill as we have passed them the Commissioner is called a coordinate authority. I do not think he is. That is not a correct description of his position under the Bill. I understand he is a subordinate in every respect, except as regards the details of executive work in which he is untrammelled and not to be interfered with. That is his position, and that is what it ought to be. In sections 517<sup>18</sup> and 518<sup>19</sup> there is a certain amount of deviation from this and a slight inconsistency in a certain sense, but I am prepared to waive that small point as I consider looking at the Bill as a whole, that the Commissioner's position is defined in the way it should be. There are certain respects in which this Bill is preferable to the law under which we at present live which as I remarked at the first reading, is full of anomalies, laxities of phraseology, and conflicts of jurisdiction. In lieu of that we shall now have a methodised and symmetrically framed law that will not starve out local self Government as the Bill as originally introduced would have done. I am there-

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*Note.* 18—517 Section—relates to powers to enforce repairs & to Vehar waterworks, &c.,

*Note.* 19—518 Section—relates to expenses of measures mentioned under above Section.

fore prepared to accept it. There is only one further observation I would like to make. The Commissioner, as I said before, has great power under the Bill as it now stands though he has much smaller power now than was proposed in the Bill as originally framed. Under the Bill, as it now stands, legislative power financial power, the power to sanction large contracts and works, to call for the production of papers, to increase the pay of the Commissioner are vested in the Corporation and that shows precisely what is the Commissioner's position and that of the Corporation under the scheme. He is the Municipal executive officer, and I accept him as such. I would here take the opportunity of referring briefly to a question which has been raised outside the Council as to whether it is not desirable that the Commissioner should be "improved" out of the Municipal constitution altogether. Believing as I do, that now he is under proper checks and safe-guards I am opposed to any such scheme. If it is adopted we shall I presume have to resort to executive Committees to which I have always objected. If we get rid of the Municipal Commissioner we shall either have another officer under perhaps another name with the same functions or we shall have what will be equivalent to Municipal anarchy. We shall not have one governing spirit ruling the whole of the Municipal Administration, and I am not prepared to look upon this with complacency. I am in favor of the preservation of the Municipal Commissioner, though I can quite see that the time may come when we shall take a further step in the direction of local self-Government and, the Municipal Corporation will have to ask the Council of that day to concede the power to the Corporation to appoint its own Municipal Commissioner. I am not prepared to ask for that yet. The Corporation does not want that power at present but I can quite see that here a further step may hereafter be taken. It must not be in the direction of abolishing him, but of vesting in the Corporation the power of appointing him. I can quite understand that in the hands of Commissioners the powers here given to them might lead to some friction. I can quite see the possibility of such friction but if the Corporation

and the Commissioner behave as they have behaved in the past such occasions may be minimised and I am prepared at present to accept this chance of friction rather than abolish the Commissioner altogether, for the result would be that the executive work of the Municipality would thereby be paralysed. Considering, therefore the various defects I have pointed out, have been cured or removed, I am prepared to hold that the Bill, as it stands is now one worthy of acceptance for the present as a solution of the question of Municipal reform. But I will not pledge myself to finality in this matter. Occasions may arise in which changes may be required. In a complex measure of this kind, which touches many interests in many different quarters and in many different ways possibly the course of actual administration may disclose—various defects and difficulties which will have to be remedied by legislative enactments. But we cannot provide for that now—In conclusion I should like to ex-

press my agreement with what the Honorable M. Forbes Adam<sup>1</sup> has said of the part taken by the Honorable Mr. Naylor in respect to this Bill. I have worked with him in the Select Committee, and have since had his assistance also in putting in shape the amendments which I have had to propose to this Council. He was good enough to put into regular form what I had merely thrown out as suggestions, and I have had the greatest assistance from him in that respect. He has shown in the course of the whole debate a familiarity with the Municipal matters of the city, which on some points I must admit was greater than my own. And, therefore, I desire to express my concurrence with what the Honorable Mr. Forbes Adam has said in reference to Mr. Naylor's labors in connexion with this important measure.

On the Municipal Bill of 1886 to remove certain doubts in the construction of Section 9 B of the Bombay Municipal Act of 1872 and 1878,

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<sup>1</sup>—"I would only wish to add that the Honorable Mr. Naylor deserves great credit for the manner in which he has performed his difficult and laborious task. The order and arrangement of the Bill, to my inexperienced eye, seem to me to be very excellent indeed."

The Hon. Mr. Telang said Sir—There is just one remark I wish to make. The difficulty met by this Bill illustrates the

20 Note.—a doubt was raised with regard to construction of a section of the Bombay Municipal Acts of 1872 and 1878. Under these Acts it was provided (Section 9 B) that votes at any Rate-payer's or Justice's election or at any election by the Corporation as herein after provided of one or more members of the Town Council shall be recorded and the said elections shall be held and the result thereof shall be declared in accordance with such rules as may from time to time be framed by Government in this behalf, the said rules not being inconsistent with this Act.

Under this Section certain rules were sanctioned and were passed by Government fixing as the date of the next election the 15th of February 1886.

Rule 1 was as follows, "For the purpose of the ratepayer's general-election of 32 members of the Municipal Corporation of the City of Bombay the said City is divided into the wards here in after specified and each such ward shall be entitled to return the number of members herein assigned to it &c."

Rule 2—"Each person qualified to vote, whether as a fellow of the University of Bombay, or in both those capacities may vote for one member and in one ward only." &c.

The validity of these rules framed by Government was questioned on the ground that section 9 B of the Act did not contemplate the division of the City into wards or the limitation of the right of voters to that of voting for a single candidate only and that the rules were beyond the scope of Section 9 B.

Note (21) Bombay Act No. I. of 1886.

An Act to remove certain doubts in the construction of Section 9 B of the Bombay Municipal Acts of 1872 and 1878.

WHEREAS doubts are entertained as to the power of Government, in rules framed by it under Section 9B of the Bombay Municipal Acts of 1872 and 1878, to divide the city of Bombay, for the purposes of elections by ratepayers of members of the Municipal Corporation of the said city, into wards and to restrict the right of persons qualified to vote at any such election to voting in one ward and for one candidate only, and it is expedient to remove such doubts; It is enacted as follows:—

1. No rule which purports to have been framed by Government under the said section, either before or after the date when this Act comes into force, shall be deemed to have been, or to be invalid merely by reason:

(a) that it divides the city of Bombay into wards and distributes the thirty-two members of the said Corporation to be elected at a ratepayers' election amongst the said wards and requires that the number of the said members so allotted to each such ward shall be returned for the prescribed ward only; or

(b) that it contemplates the entry by the Municipal Commissioner of the names of persons qualified to vote at ratepayers' elections in the list to be prepared by him under Section 9D of the said Acts in one or more wards; or

(c) that it prescribes the ward in which each person qualified to vote at ratepayer's elections shall exercise that right and restricts such person's right to voting at elections of members for the one ward so prescribed and for one candidate only at each such election.

soundness of the views put forward in this Council some years ago by the Honorable the Advocate General to the effect that it is desirable to have some means by which rules made by the Executive Government under statutory powers should be brought before the Council in some form before obtaining the force of law. When Mr. Latham mentioned this some six years ago, one of the then members of the Government said it was an attempt to curtail one of the prerogatives of the Executive Government. I would venture to say with great respect that it is an entire misapprehension of the true functions of the Executive Government in this matter to speak of them as part of its prerogative. If the rules now under consideration had been placed before the Council at the time the Act was brought in, it is not unlikely that the present difficulties would have been avoided. I hope some remedy will be devised by which the rules made by Government from time to time under various Acts may be brought before the Council.

22

On the first reading of the Bill of 1886 "to enable the Municipal Corporation of the City of Bombay to raise increased revenue from Town-duties," The Honorable Mr. Telang spoke on the subject of refund system about which the Honorable Mr. Forbes Adam said that it had worked smoothly and well and with little or no inconvenience.—

*Note.* 22--Bill No.3 of 1886-

A Bill to enable the Municipal Corporation of the City of Bombay to raise increased revenue from Town-duties.

Whereas it is expedient to enable the Municipal Corporation of the City of Bombay to increase their revenue from town-duties, with effect from the first day of October 1886, and for this purpose to amend the Schedule B. annexed to the Bombay Municipal Acts of 1872 and 1878 ; It is enacted as follows :—

New Schedule substituted for Schedule B to Bombay Acts III of 1872 and IV of 1878.

1. On and from the first day of October, 1886, the following schedule shall be deemed to be substituted for the Schedule B annexed to the said Acts (namely) :—

The Honorable Mr. Telang—My information on that subject points to the same result as the Honorable Mr. Forbes Adam has mentioned. I have always understood that the working of the refund system of the Municipality is giving satisfaction to all parties concerned. But as to the other point made by the Honorable Forbes Adam, I confess I feel a difficulty in regard to it as

SCHEDULE B.

(Referred to in Section 114.)

TOWN-DUTIES.

Articles liable to Duty.	Maxima rates leviable.
(1) Grain of all sorts ... ..	6 annas per candy ... ..
(2) Wines and Spirits ... ..	4 do. per imperial gallon ... ..
(3) Beer ... ..	½ anna per do. ... ..
(4) Petroleum, as defined in the Petroleum Act, 1886.	½ do. per do. ... .. XII of 1886.
(5) Sugar, Molasses and Goor ... ..	8 annas per hundred-weight ... ..
(6) Ghee ... ..	10 do. per Bombay maund ... ..
(7) Timber, excluding Railway sleepers	2½ per cent. on market value ... ..
(8) Firewood ... ..	2 annas per candy." ... ..

2. Notwithstanding any thing contained in the said

The Municipal Corporation may impose new rate of town duties with effect from 1st October 1886.

Acts as amended by the Bombay Municipal Acts Amendment Act 1882—

(a) it shall be lawful for the said Corporation, by resolution at a special general meeting held at any time within one month from the date when this Act comes into force, to fix, with reference to the said substituted Schedule, the articles on which and the rates at which town-duties shall be levied for the half-year commencing on the first day of October 1886, and

(b) any resolution so made by the said Corporation shall have effect, during the said half year, in supersession of the resolution made by the said Corporation in the month of January, 1886, fixing, under sections 67 and 115 of the said Acts, as so amended, the rates at which and the articles on which town-duties shall be leviable for the year 1886-87.

STATEMENT OF OBJECTS AND REASONS.

The Municipal Corporation of the City of Bombay having undertaken the construction of the extensive new works, known as the Tansa Water Works, for increasing the supply of water to the City of Bombay upon borrowed capital, have represented to Government the need for their being empowered to raise a large revenue from town-duties in order that they may be in a position to meet the increasing claims upon them for interest and repayment of capital, without interfering with the current expenditure in other departments of the Municipal administration. This Bill has, therefore, been drawn to give effect to the wishes of the Corporation, pending the passing of the new Bombay Municipal Act.



well as in regard to the general framing of the schedule. The schedule has been framed with reference to the wants of the Municipality and upon an estimate of the yield of the various duties as they are in the old Act, and as it is proposed to enhance them. It seems to me that there is great difficulty in interfering with any particular portion of a schedule framed on that basis, because you can then be scarcely sure that the yield of the whole of the duties together will be as much as the needs of the Municipality will necessarily require. In view of that circumstance, I feel that this schedule ought at the present stage to be allowed to remain in the condition in which it is brought before the Council, but when the matter comes up for final decision with the general Municipal Bill, this schedule will be liable to consideration and revision. The honorable mover stated that no notice of amendment had been given. I may say that it occurred to me that some points in the schedule were open to amendment, especially having regard to the fact that in the Corporation itself there were very considerable differences of opinion as to the proper framing of such a schedule. However, I gave up the intention of proposing such amendments in view of the fact that the Council would have great difficulty in making trustworthy estimates of the yield of the duties as they might be altered here, and thus the important scheme of waterworks might be delayed. Besides, as the statement of objects and reasons point out, this is in a certain sense temporary measure. The whole question will be liable to review when the Bombay Municipal Bill comes before the Council for consideration, and I think the better course under the circumstances would be to let the schedule stand, provided it is understood to be liable to revision and reconsideration in every part on that occasion. In that view I am prepared to support the Bill as it stands.

Bill to provide for the occasional appointment of a Deputy Municipal Commissioner for the City of Bombay 1885.

The Honorable Mr. Justice Telang spoke as follows on the

**second reading of the Bill No. 50 /1885 to provide for the occa-**

*Note (23) Bill No. 5 of 1885.*

A Bill to provide for the occasional appointment of a Deputy Municipal Commissioner for the City of Bombay.

Whereas it is expedient to make provision for the temporary appointment, whenever necessary, of a Deputy Municipal Commissioner for the City of Bombay; it is enacted as follows:—

1. Government may, at any time, and from time to time, appoint a Deputy Municipal

Commissioner for the City of Bombay if it shall for any, reason appear expedient so to do, and any such appointment may be for such period as Government shall deem proper.

Government may, whenever necessary, appoint a Deputy Municipal Commissioner for the City of Bombay.

2. A Deputy Municipal Commissioner so appointed shall : (a) receive such allowances as shall from time to time be fixed by Government ;

(b) Assist the Municipal Commissioner in the performance of his duties under the Bombay Municipal Acts of 1872 and 1878,

And all acts and things performed and done by a Deputy Municipal Commissioner by virtue of and during his tenure of the office of the Deputy shall, for all purposes, be deemed to have been performed and done by the Municipal Commissioner.

3. If the Municipal Corporation of the City of Bombay shall sanction the payment of the allowances of a Deputy Municipal Commissioner, or of any portion thereof from the municipal fund, such payment shall be deemed to be a purpose expressly authorized by the Bombay Municipal Act of 1872, within the meaning of Section 136 of that Act : Provided that no such pay shall be paid out of the municipal fund without the sanction of the said Corporation.

4. Sections 3, 4 and 5 of Bombay Act II, of 1885 (An Act to empower the Municipal Corporation of the City of Bombay to subscribe to the Guarantee Fund of the Bombay International Exhibition and for other purposes) and the words "and in the event of his becoming a member of the said Committee, to provide for the appointment of a Deputy Municipal Commissioner to aid him in the discharge of his municipal duties," in the preamble of the said Act are repealed.

Repeal of portion of Bombay Act II, of 1885.

**STATEMENT OF OBJECTS AND REASONS.**

The Municipal Corporation of Bombay have recently sanctioned the payment of a sum of money to provide for the temporary appointment of a Deputy Municipal Commissioner in order that the Municipal Commissioner may be able to confer with and assist the Government Law Officer in the preparation of a new Municipal Act for Bombay; but the municipal law at present in force does not authorize the appointment of a Deputy Commissioner.

In sections 3, 4 and 5 of Bombay Act II, 1885, special provision was made for the appointment of Deputy Municipal Commissioner in the event of the Municipal Commissioner's becoming a member of Executive Committee of Management of the Bombay International Exhibition. The present is another occasion when such an appointment appears necessary and others may from time to time occur.

It is thought expedient, therefore, to repeal Sections 3, 4 and 5 of the abovementioned Act and to re-enact them as a separate general measure. This Bill has been drawn for this purpose.

sional appointment of a Deputy Municipal Commissioner for the City of Bombay :—Your Excellency,—Here is just one remark I should like to make before the Bill is read a second time though it is not intended to oppose the passing of the Bill or to suggest any amendment in it as it is now put before the Council. I only wish to guard against a possible treatment of the subjects covered by this Bill as finally concluded on the present occasion. I am willing to assent to the Bill passing in its present form merely as a provisional enactment—But some points which are dealt with in the present clauses of the Bill are points which as I think will have to be discussed when the whole constitution of the Municipality and the framing of its administration come to be considered at the time the Municipal Bill is brought before the Council. Here is, for instance one point which is dealt with in this Bill, viz, that the Government should have the power to appoint the Deputy Municipal Commissioner. That raises a question very fully discussed in connection with the Local Boards Act, and it is a question, so far as I can see from the published reports of the discussion, that has not been discussed by the Corporation, which has asked the Council to pass this Bill. For the emergency which has arisen I am willing to agree that the power of appointment should rest with the Government, but in view of the wider scope given to the Bill as explained in the statement of Objects and Reasons, it ought not to be treated hereafter as fully decided on the present occasion.”

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### TODA GIRAS ALLOWANCES ACT.

On 3rd June 1887 in the Bombay Legislative Council the

Honorable Mr. Richey moved the second reading of Bill No. <sup>24</sup> 7 of 1886, which was a bill brought forward to declare and amend the law relating to Toda Giras allowances.

*Notes 24*—Bill No. 7 of 1886.

A Bill to declare and amend the Law relating to Toda Giras Allowances.

Whereas it is expedient to declare and amend the law relating to toda giras allowances ; It is enacted as follows:

Short title. 1. This act may be called “The Toda Giras Allowances’ Act, 1886.”

2. In this Act, “toda giras allowance” ~~means~~ a cash payment made periodically to

Section 6 clause (a) of the bill ran as follows.

**“ Nothing in this Act applies to a *toda giras* allowance which was alienated previous to the.....day of.....188: (a)**

“*Toda giras* allowance” any person on the part of Government, or by, or on the part defined. of a holder of alienated land, under the name of *giras*, *vol* or *toda giras*.

3. Every *toda giras* allowance is continuable hereditarily to the lineal male heirs in

*Toda giras* allowances to be held hereditarily in male descent of the first recipient thereof under British rule: male descent.

Provided that, on failure of such heirs, the Governor in Council may, if he thinks fit, direct that the allowance, or some portion thereof, shall be continuable hereditarily to the lineal male heirs in male descent of a brother of the first recipient of such, allowance under British rule.

4. No mortgage, charge or alienation of a *toda giras* allowance, or of any part thereof

Mortgage, &c., of or of any interest therein, by any recipient of the *toda giras* allowance by same, shall be valid as to any time beyond such any recipient thereof valid only for his life. recipient's natural life.

Exemption of *toda giras* allowance from attachment and sale in execution of decrees.

5. No *toda giras* allowance shall be liable to attachment, or sale in execution of a decree:

Provided that any money due or likely to become due to a judgment-debtor on account of a *toda giras* allowance may be attached in execution of the decree against him, but such attachment shall not affect any money which becomes due on account of such allowance after such judgment-debtor's death.

Saving of *toda giras* allowance alienated before the 183 .

6. Nothing in this Act applies to a *toda giras* allowance which was alienated previous to the day of 188 :

(a) If the instrument purporting or operating to effect such alienation has been registered under any law for the time being in force relating to the registration of documents or

(b) If the said instrument, not being compulsorily registrable and not having been registered under any such law as aforesaid, is presented for inspection, together with a copy thereof for record, at any time within six months after the date when this Act comes into force, to the Collector of the district in which such allowance is payable; or

(c) If, when such alienation has not been effected by an instrument, proof thereof is produced within the period and to the Collector aforesaid.

#### STATEMENT OF OBJECTS AND REASONS.

“*Giras*,” as it was understood before the advent of the British rule, was a kind of black-mail paid by certain villages in Gujarat to certain lawless rajputs and kolis as the price of their protection against outrage or of their forbearance from plunder and violence.

2. The levy of these contributions by the “*girassias*” from the villages direct was attended with many abuses, and our Government, in or about the year A. D. 1815 interposed to prevent this levy and undertook, to pay the *giras* from the Government treasury. Arrangements were made for ~~ascertaining~~ the sums payable and the per-

If the instrument purporting or operating to effect such alienation *has been* registered under any law for the time being in force relating to the registration of documents."

sons entitled to receive them, and from that time down to the present these "toda giras allowances," as they have since come to be called, have been regularly disbursed by Government.

3. Soon after the establishment of civil courts, the creditors of girassias found these allowances a convenient property for attachment in execution of decrees which they obtained against their debtors and some sales of toda giras took place. But the question soon raised by the local executive authorities whether the alienability of these allowances should be recognized by Government, and objections were raised which led to litigation. There were several suits, but the principal were those brought by Sambhulal (8 Moore's Indian Appeals, 1) and by Pestanji Ratanji (Mor, S. D. A. Cases, 291.) The view which Government entertained at this time may be gathered from the instructions which they gave to the Collector of Surat in 1844 for the defence of Sambhulal's case. They said:

"It would be difficult, if not impossible, to define the origin of the girassia and of his rights and dues. But this is certain, that on our coming into possession of any district where we have found girassias, we have respected their rights, and have taken great pains to ascertain their dues on villages, and, in order to prevent disputes and violence, have paid these dues direct from our treasuries. These dues have always been considered hereditary, but it may be doubted whether there is any real authority for considering these girassias as hereditary officers, or their dues as emoluments of office. Their position varied according to the girassia's power. In some cases he was a chief, holding lands and rights in various villages; in others he was little better than a recognized freebooter, but with established dues on his particular village. In all cases where the dues were unpaid, we know that under the native rule, the girassia resorted to violence against the recusant village. These dues may, in our language, be considered blackmail or the price of forbearance. But, however considered, they were a property recognized by us without considering their origin, but merely the person or property to whom the dues belong, and are to be paid. It is believed that girassia dues paid from treasury have been frequently paid to their creditors, and that there have been instances of their sale and mortgage, chiefly, in the Surat district. Our policy, however, should be to prevent these transfers, and to make this girassia property inalienable, as the holding of a particular class which we have recognized as an exclusive property for the maintenance of these persons, for the great end of preserving the peace of the country. The defence, therefore, should be, that the girassia dues paid from the treasury are fixed in the person of the girassias; that they were so in their origin, and have since continued so; and that the whole nature of the tenure and the circumstances of the country require that the Government should maintain them to be inalienable."

At the same time Government informed the Collectors that "should the suit terminate unfavourably, it would take into consideration the expediency of obtaining an Act to render property in toda giras what its nature and circumstances required it to be, fixed and inalienable in the possession of the girassia."

4. The decisions of the Courts in India varied. But eventually the Sadar Diwani Adalat decreed against the alienability of toda giras, and Government thereupon issued

The Honorable Mr. Telang moved that in section 6, clause (a) the words "is duly" should substituted for the words "has been" and said. "My Lord, with reference to clause (a) of

orders (this was in 1856) that no more payments of toda giras should be made through the civil courts to the judgment-debtors of girassias or to the purchasers of toda giras at courts' sales. Sambhulal's case was, however, carried to the Privy Council and their Lordships of that Council passed a judgment, of which the effect, as described by their Lordships in a subsequent case (10 Bo-H. C. R., 283), was to hold that toda giras allowances "constitute a recognized species of property capable of alienation and seizure and sale under an execution."

5. On receipt of this adverse decision, the Government did not deem it necessary to resort to legislation, as they had proposed in 1844, but they determined to adopt a course which, it was thought, would effect the same purpose as legislation. The orders issued (Government Resolution No. 4309 of 27th November, 1862) were as follows :—

"17. Government did not initiate these payments, but found them, on obtaining possession of the country, generated by the disorder of the previous rule. The holders were treated with unexampled indulgence, but the peace of the country called for the policy then adopted, and faith should now be kept with their descendants, although they are no longer dangerous to the State. This the Governor in Council is prepared in the strictest sense to do, but he cannot allow that a tax at first so irregularly imposed on the community should now be extorted by the aid of legal proceedings from the public purse by others than those in whose favor the original arrangements were made, or that Government should be compelled to continue its good offices between the girassias and the village communities in a manner to which it never pledged itself. It should therefore be publicly declared in every taluka, as the Revenue Survey settlement is introduced, that the new rates of assessment do not include any such collection, and that Government will in future not aid or take part in the collection of giras.

"18. In thus placing the girassias in the same position with respect to the village communities which they originally held, the Governor in Council cannot allow them to resort to other than legal means to enforce their claims, and if any village communities decline to accede to the girassias' demands, the latter must resort to the civil courts. At the same time the Governor in Council is not unwilling to make some sacrifice of revenue in order to relieve the girassias from the necessity of resorting to law, and he is prepared, whenever the girassia may be willing to receive from Government his present income, instead of collecting it direct from the villagers, to continue that income to him under such reasonable rules and restrictions as it may seem fit to Government to impose,

"19. The conditions on which this arrangement will be entered into are that a girassia shall consent to abandon for the future his claims against the village communities, and, in return, the allowances he has hitherto enjoyed shall be continued by the State hereditarily (during good behaviour) to the male issue of the first person who received the giras from the British treasury. The giras, or any portion of it, may further be continued to the legal male issue of a brother of the first British recipient in any case in which, on inquiry, the Revenue Commissioner may find that hardship would be felt by the discontinuance of the giras. If in any case, however, the allowance has been enjoyed on condition of service, that condition will not be abandoned,

section 6 I would suggest to the Council that it is desirable that a certain change should be introduced, so that clause (a) should

although it is not expected that such service can now be taken with advantage to the public."

The agreements which were taken from the girassias under these orders contained the following clauses, amongst others :—

"That we will not alienate our giras out of our families by sale, mortgage, gift, &c.

"That we will, whenever called for, perform police or any other service which it may have been or may be customary to exact from girassias, in return for the payment of giras."

And the sanads issued to those who signed the agreements purported to make the toda giras allowances "continuable to the lineal male heirs in male descent" of the first recipient under British rule, or, failing that line, to the lineal male heirs in male descent of a brother of the said first recipient."

6. During the next few years after the issue of these orders there was a cessation of litigation concerning toda giras allowances, but when, in 1871-74, suits again began to be brought, Government were advised by their law officers that the introduction of the revenue survey and a change in the Government system of collecting revenue afforded no valid ground of defence to those suits. The agreements of the girassias had also, it appeared, been taken in a very informal manner and doubts were entertained whether they would be held to be binding legal documents.

7. In the meantime Government anticipated that the provisions of the Pensions Act would protect toda giras allowances from the process of civil courts, and further measures were postponed until this question should be judicially determined. The Privy Council finally decided in 1881 (5 I. L. R., Bom. 498) that the Act bars suits against Government relating to toda giras allowances, but the High Court of Bombay held in 1880 (4 I. L. R., Bom. 432) that the attachment of such allowances in execution of decrees is not barred by the Act, and Government, under legal advice, resolved not to appeal to the Privy Council against that ruling.

8. On a review of the whole question, the Governor in Council has arrived at the conclusion that legislation is now necessary in order (1) to declare the extent to which toda giras allowances are heritable and (2) to prevent future alienation of these allowances out of the original girassias' families whether by voluntary transfer or through the action of civil courts. Government are prepared to waive the enforcement of their claim to service from the recipients of these allowances, but having regard to the purposes for which they were originally recognized, and to the possible dangers which might arise from turbulent classes like the girassias being in course of time dispossessed of them, it seems politically expedient to take measures towards the two ends above mentioned.

9. Some of the allowances are paid on account of alienated villages. Of these a portion is paid by Government, but in a few instances the inamdars still pay the girassias direct. There is no real difference between the case of those girassias who are paid from the Government treasury and the case of those who recover their dues from inamdars, and it is, therefore, proposed to subject all to one and the same law.

10. In order to obviate any interference with vested rights, toda giras allowances which have been alienated previous to the introduction of this Bill are expressly exempted from its provisions. Their number is believed to be small.

read in this way: "If the instrument purporting or operating to effect such alienation is *duly* registered under any law for the time being in force relating to the registration of documents."

I do not object to the provision that the instrument should be exempted before the Act comes into force, but why should it also be registered before that time? Of course there is the danger of collusion but there is no greater danger as regards an instrument coming under clause (a) than there is as regards alienations falling under clauses (b) & (c). It is also to be remembered that in no case can the instrument be registered after 8 months from the date of execution and as clause (b) and (c) provide for 6 months, clause (a) will provide for 8 months. The effect of clause (a) as proposed by Mr. Richey will be practically to curtail the period allowed by the general registration law, and it may, in practical operation, become a retrospective enactment. In cases of collusion, too, in such a matter as this, it should not be difficult to prove such collusion. But by clause (a) as now proposed, some alienation, even though not collusive will be rendered invalid. I am willing that 6 months should stand. Twelve months were suggested to me by the old Registration Act still if Mr. Richey thinks 6 months should not be extended, I am quite willing to accept that. But by adopting my amendment, clauses (a) and (b) will be brought into unison."

The amendment was lost.

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### VILLAGE SANITATION BILL OF 1889.

The Honorable Mr. Telang's speech on the first reading of the Village Sanitation Bill of 1889:—

"It would hardly be appropriate to go into the details of this measure on the present occasion. I should however just like to make one or two remarks with reference to the question of funds. I entirely accept the view of the Honorable member in charge of the Bill that all steps taken in this matter should be of a tentative character and taken in a very cautious way, and



accepting that view, I confess I am rather nervous regarding the provision in the Bill which enables the executive authorities created by it to levy special taxation for the purposes of the Bill. I do not think this is at present necessary. It seems to me possible to devise some means by which the relations of the Sanitary authorities and the existing local boards may be so arranged as to avoid the necessity, at least for the present, of giving special taxing powers to the new authorities to be created. I should like this matter to be more fully considered and dealt with in committee. I think there would be more chance of Sanitary improvement becoming more popular, being more generally acquiesced in, and accepted, if at the first start it was not associated, with the unpleasant presence of the tax gatherer in the villages. There is only one other thing I should like to refer to. I do not know whether the Honorable member in charge of the Bill has had his attention drawn to certain criticisms on the Bill and some observations on the general subject by Miss. Florence Nightingale. Although I am not prepared to concur in all her remarks, I think that she offers some suggestions worthy of consideration but I need not say more upon the matter just now as the Honorable member informs me that he has received from Miss. Nightingale a copy of the papers I have just alluded to."

Speech on Second reading—

"We have had several criticisms on this Bill in which the members of this Council have been asked to consider well what they are about to do. I have done so to the best of my powers. And I entirely accept the view which Sir Raymond West has expressed that this is essentially a tentative and experimental measure. I also think it not unlikely that some good may come of the passing of this measure. At all events I am satisfied after considering the Bill that no mischief need come of it, that we are taking a step in the right direction, and that in some parts of this Presidency some tangible progress may be made in what every one agrees is most desirable. There is no doubt that this is one of the matters in which an apparent conflict between the two principles which Sir. Raymond Wes

has referred to, arises. We want efficiency and we also want progress. But I have no hesitation in making my choice. If I were to look merely at the exigencies of the present moment, and to the securing of the sanitary improvement just now, it is possible I should class myself with those who consider that all sanitation throughout the Presidency should be entrusted to the officers of the Central Government. But I think it is right it is our duty to take a somewhat wider view, and we must consider that if the business of sanitation is entrusted entirely to over-worked officers of the Central Government, there is great danger of its falling into hands which will not be able to do it satisfactorily. I take the same view with regard to sanitation as in regard to all local matters, namely that it is desirable to make a beginning of popular administration in whatever work is to be done. I am therefore of opinion that this measure is a proper one as an experiment, in order to see how far sanitation can be entrusted to such village committees as are proposed to be constituted under this Bill. In one part of the criticisms I remember seeing a suggestion that this is practically a withdrawal from the principle of local self-Government, that the Sanitation Bill of 1889, is an attempt to recede from the Local Self-Government Bill of 1884. I confess I am entirely unable to follow that criticism. There may be some matters to adjust between the Local Boards and the authorities to be created under this Bill but it is a mere matter of adjustment, and I do not see anything which could present any serious difficulty in that respect. There is another point and that is in reference to an observation, made by Sir Raymond West as to every village having a power of doing evil outside its own proper limits. Well I quite agree with what he said and quite accept his view; but I think I may be permitted to point out the logical consequence of that view that to a certain extent it becomes the duty of the Central Government as representing all the villages and towns under its sway, wherever sanitary work is to be done, to render substantial assistance in carrying it out and this particularly and this with—par-

ticular liberality at the first start of sanitary work on a systematic basis. Passing to another point I notice that Dr. Hewlett said it was strange that in Sanitary Bill there should be no reference to the Sanitary Department. That criticism seems to me to be sound, but in the particular case we have to deal with, I think it is not desirable to give the Sanitary Department any powers independent of the representatives of the general administration. These latter, the Collector and subordinates are more likely to work in sympathy with the villagers than the sanitarians, and ought therefore to have the ultimate control, only consulting the Sanitary Department on all matters where expert guidance is necessary."

### SALT BILL.

The Honorable Mr. Telang's speech on the second reading of the Salt Bill of 1888:—

"With regard to the complaints made in the petitions before the Council, the Select Committee say that there is nothing on the Government records to support them. This I should consider hardly a satisfactory proof that the complaints are baseless for in these matters Government is really one party and the salt traders and manufacturers the other party. I think the views of the latter deserve more consideration than they have received from the Select Committee. As to the public meeting to<sup>27</sup> which the Honorable member has referred I had the honor of taking an humble part in it. I think there was a great deal of just complaint, although no doubt in later years we have not heard much about it. The salt merchants complained of the Act and the methods of its administrators, but failing in obtaining concession to their wishes, ceased to complain. I do not wish for one moment to suggest that the administration has not been in many respects such as was not anticipated by those who opposed the Act. I am quite willing to admit the actual working

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*Note 27.*—Held in the Town Hall of Bombay.

*Note 28.*—Honorable Mr. Pritchard.

of the Act has been a good deal more satisfactory than was expected. Yet I can remember some of the complaints which were made for some years after the Act was passed. With regard to the point the Honorable member referred to I think it will be better to say nothing until the Bill comes up for consideration in detail."

The Honorable Mr. Pritchard.—"There is hardly a salt owner in the Presidency I am not acquainted with. After the first six months I never heard a complaint from any of them. They have all been perfectly satisfied."

The Honorable Mr. Telang.—The Honorable member has the reputation of being a very firm administrator, and that may explain the silence of salt owners after once their petitions were rejected.

#### KARACHI PORT TRUST BILL OF 1886.

The Honorable Mr. Telang spoke as follows on the first reading of the "Bill to vest the port of Karachi in a Trust."

Your Excellency—I do not profess to know any thing specially about the subject matter of this Bill, but with reference to <sup>29</sup> the constitution of the Board, the point which the Honorable Mr. Dayaram has made is one which occurred to me. I would suggest it for consideration whether his objection might not be met by some provision like that which is in practice as regards the Port Trust of Bombay, of which the Municipal Commissioner is always

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*Note 29* :—The Bill provided that the Board should consist of nine or seven members at the discretion of Government. One of the two at least are to be elected by the Chamber of Commerce, one is to be the Manager of the North Western Railway, and the remaining four or six are to be appointed by Government. The Honorable Mr. Dayaram pointed out that out of these four or six, two would necessarily be the Chairman and Vice-Chairman, and there was every reason to believe the Commissioner would appoint a gentleman from an Engineering and a gentleman from the Customs Department respectively and with seven members there would be no seat left for the appointment of an independent non-official or a native. The owners of the native craft, the native merchants and the Municipality of Karachi would not be adequately represented. The Honorable Dayaram therefore suggested to give the representation to the native public through the Municipality at any rate by having a Municipal representative on the Board of Port Trustees.

a member, so that the Municipality is represented upon the Trust. It is possible that if some provision could be made by which some of the Municipal Commissioners of Karachi would be associated with the Board, the objections with regard to the native merchants and the Municipality not being represented upon it might

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be met. From section 16 I assumed that the intention was to have a full time officer apart from the other members of the Trust. But I do not know exactly what is intended. It seems to me that where there is a large trust to be presided over a full time officer would be the proper one to have.

### THE BOMBAY MATADARS BILL.

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On the first reading of the Bombay Hereditary Offices Bill (Bill No. 3 of 1884) so far as it relates to Matadars, the Honorable Mr. Telang spoke as follows :—

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*Note 30 :—Section 16—The remuneration of chairman and vice-chairman to be fixed by Government—*The chairman and the vice-chairman shall respectively receive such remuneration, if any, as Government from time to time determine.

Every trustee, other than the chairman and the vice-chairman, shall be entitled to a fee of such amount not exceeding thirty rupees as shall from time to time be prescribed by Government for each meeting of the board at which a quorum is present and business is transacted and which he attends from the beginning to the end thereof: Provided that if more than one such meeting is held in any one week, no more than one fee shall be paid to any trustee for his attendance at all such meetings during that one week.

*Note 31 :—*The provisions of the Bombay Hereditary Offices Act III. of 1874 are unsuitable to the cause of the matadari village watan in Gujarat, because that Act restricts the recognition of wataudars as “representative wataudars” entitled to office in their own right to those who are recorded as heads of families which have actually served, whereas it is admitted to be the custom of matadar watan that all registered matadars have the right of service, whether they or their ancestors have actually served or not. This Bill has therefore, been drafted to extend to all registered matadars the rights secured to representative wataudars by Section 40 of Act III. Under Section \* 14 of the Bill the registered matadars will exercise the right of election confined to representative wataudars by Section 40 of Act III., but the nomination will be by a majority and not unanimous. On failure of election or nomination, the right to officiate vested in the representative matadar whose turn it is. The representative matadars are determined by the vote of a majority of registered matadars in favour of one of their number, failing which the senior male member of the family to which the mata belongs will be registered as representative matadar. If there are two or more representative mata-

"Your Excellency,—I do not wish to say anything at this stage of the Bill, as it is to be referred to a Select Committee, but I cannot refrain from expressing my objection to these Sec-

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tions in this Bill, as well as in the one already referred, for amending the Hereditary Offices Act, under which provision is made for resuming or forfeiting a whole Watan for the offence of any single individual of a watandar family. I remember this question being discussed when the Hereditary Offices Act came before the Council in 1874, and some remarks made by the

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honorable member who has just spoken seem to imply that the

dars in a village, their order of rotation as officiators may be determined by the Collector by lot and not by his own discretion. By Section 6 power is given to the Governor in Council to deal with cases, known to exist, in which though there are two or more matas in a village, the right to the patel's office is found to attach exclusively to one mata. The Bill also makes suitable provision for the term of office, regulates the appointment of deputies, gives a full definition of the disqualifications for the patel's office, and generally substitutes clearer provisions for those sections of Bombay Act III, of 1871 which are repealed so far as affects matadars."

\*In every other case, registered matadars may elect an officiator when a vacancy occurs.

11. In every other village the registered matadars may, on or in anticipation of the occurrence of a vacancy in the office of patel, elect a matadar of the village to fill the vacancy.

Failing the election of one officiator by the registered matadars, right of office to vest in representative matadar.

If a majority of the registered matadars, consisting, when the registered matadars belong to two or more different castes, of not less than two-thirds of the number, fail within such reasonable period as shall be prescribed by the Collector in this behalf, to nominate some matadar for the vacancy, or if,

the person nominated is not a matadar of the village, or is disqualified for office the right of office shall vest in the representative matadar, or in one of the representative matadar if there are more than one.

Note 32 :—Sec 31 of Matadars Bill No. 3 of 1881.\*

Note 33 :—Honorable Peile.

\* Section 31—If a matadar elected to officiate under Section 14 (which empowered registered and representative matadars to elect an officiator when a vacancy occurs in the office of Patel) or an officiating representative matadar or any deputy appointed by a representative matadar is convicted by a Court of Sessions of an offence committed by him as village patel and such conviction is not subsequently reversed or quashed, the Governor in Council may direct the forfeiture of the matas or of any mata or of any part, or of any of the profits of any mata in the village.

resolution which the Council came to on that occasion, is a resolution which the Council ought to adopt on this. I confess I was not satisfied then with reasons given in support of the resolution and am not satisfied now. I hope the Select Committee when considering this and the other Bill will reconsider that question, without regarding themselves as bound by the resolution the Council then arrived at."

On 16th July 1887 of Bill No. 3 of 1884, to amend the Bombay Hereditary offices Act so far as it relates to Matadars, was read second time and was considered in detail.

The Section 5 of the Bill No. 3 of 1884, was drafted as follows.

Matadar's service register what to contain. In the register of lands and allowances in consideration of which liability to perform service still exists, kept under section 65 of Bombay Hereditary Offices Act, the Collector shall specify for every village in which there are matadars :

- (a) the number of distinct matas in the village separately recognized in the Collector's records ;
- (b) the name of the representative matadars of each mata to which a right to hold the office of patel attaches ;

Section 9—of the Bombay Hereditary Offices Bill of 1885—When any representative watandar or any deputy or substitute appointed by him is convicted by a criminal court not inferior to a court of Session of any offence in the discharge of his official duties, or of any of the offences specified in the second schedule or of the abetment of such offence and such conviction is not subsequently reversed or quashed the Governor in Council may direct the forfeiture of the whole or of any part of the watan. Such forfeiture may be either absolute or for such period as the Governor in Council thinks fit.

"Matadar" (1) "matadar" means a member of a family to which the office of village patel or some share in the discharge of the duties or in the exercise of the powers of that office, belongs hereditarily ;

"Mata" (2) "mata" means the aggregate of the rights, privileges and responsibilities vesting in a matadar or in several matadars jointly, as such ;

"Representative matadars." (3) "representative matadar" means a matadar whose name is entered as a representative matadar in the register kept under section 5 of this Act ;

"Registered matadar." (4) "registered matadar" means any matadar whose name is entered in the said register and includes a representative matadar ;

"Senior member" and "senior heir." (5) "senior member" and "senior heir" mean, respectively, the member or heir who first acquired membership or the right of inheritance, whether by birth, marriage or otherwise ;

- (c) the name of every other matadar directed by the Collector to be entered in the register under section 7 or 9 ;
- (d) where there are more representative matadars than one, the order of rotation in which, failing the appointment of an officiator by election, the right to the patel's office is to vest in the said representative matadars ;
- (e) the number of persons required to officiate as patels contemporaneously ;
- (f) a description of the service lands held by the matadars, showing the area, survey numbers and the assessment thereof, together with the quit-rent, if any payable and the net amount of revenue alienated by Government ;
- (g) the amount and nature of the cash or other allowances, if any, held by the matadars ;
- (h) the watan property or profits assigned under section 23 of the Bombay Hereditary Offices Act for the emoluments of officiator ;
- (hh) *the nature of the duties customarily discharged by matadars ;*
- (i) such other particulars as Government from time to time direct.

The said register shall be amended from time to time whenever any change is made in any of the particulars therein specified in accordance with the provisions of this Act or of the Bombay Hereditary Offices Act.

*Note :—*Words in italics were not in the original draft of the Bill but proposed to be inserted by Mr. Telang.

Mr. Telang moved the following amendment:—In Section 5 add “ (hh) *the nature of the duties customarily discharged by matadars.*” And said “My Lord, as there is a penalty attached to any failure in the proper discharge of the duties of the office, there can be no objection to specify the duties, so that there may be no misunderstanding and every Matadar may know, what he is bound to do. I do not think there will be any practical objection to this course, and I move this amendment accordingly.”

The amendment was subsequently withdrawn. Section 6 of the bill 3 of 1884, was drafted as follows.

Right to patel's office to attach ordinarily to every mata ; but

6. In every village in which there are two or more distinct matas separately recognized in the Collector's records a right to hold the office of patel shall ordinarily be deemed

to attach to each mata :

*Exclusive right may be declared by Government to attach to mata.*

*Provided that it shall be competent to the Governor in Council to declare, if, upon consideration of the past history of the tenure of the office in any village and of the circumstances*

*so far as known, under which the village was founded, it shall appear to him equitable so to do, that the right to the patel's office in such village attaches exclusively to one mata, and every such declaration shall be conclusive evidence of the exclusive right thereby affirmed.*



Mr. Telang moved an amendment to omit the proviso to Section 6. and said.

‘I have a very strong objection to legislation of this description, of which we have had much in recent days. The question involved being one of right, it ought I maintain, to be left for determination to the established tribunals of the land and not be handed over to the Governor in Council.’

The Honorable member in charge of the bill having explained the grounds upon which it was thought desirable that the Governor in Council should have power to make an exception to the rule, Mr. Telang said ‘I am not satisfied with the explanation. The course proposed must prove unsatisfactory.’

The amendment was lost.

Section 8 clause (3) of the Bill was drafted as follows.

Mr. Telang moved that the following words be substituted for section 8 clause (3)—\* and said.

‘If there are two or more Matadars of any such Matadar family, the Collector shall, as soon as may be after the passing of this Act, call upon all such Matadars to send in to him in writing the name of the member of their family whom they wish to be entered in the said Register as Representative Matadar of the Matadar family. The Collector shall then enter in the said Register as Representative Matadar the name of the Matadar who obtains the larger number of votes, and in case of an equality of votes between two or more Matadars, the Collector shall decide between them by drawing lots in such manner as he shall determine.’

and said.” The proposal which I make is to enable members of a Matadar family to nominate their own representative, instead of giving the Collector the power of making the nomination. In moving this amendment I would ask that the last

\* (3) If there are two or more registered matadars of any such mata, the Collector shall as soon as may be after the passing of this Act, by written notice require the said registered matadars to assemble in his presence for the purpose of determining which of them shall be the representative matadar of the mata.

clause be allowed to run in the form I have now read instead of that which I had originally proposed. I am quite content that in case of equality of votes the decision should devolve upon the Collector, in order that the Collector may then be able to apply the educational test proposed in Section 28 clause (c).<sup>31</sup>

Mr. Telang moved to lay down that representative matadar should be allowed to officiate without consulting Collector or any one else and said—"I do not see why a representative Matadar should not be allowed to officiate as soon as he likes without consulting the Collector or any one else." The Advocate General said—As we have already affirmed the principle of the Bill in carrying its second reading and as the scheme of the Bill is to invest the Collector with the power of dealing with Matadars, I am against these amendments which, if carried, would seriously abridge the Collector's power." The Honorable Mr. Telang replied—"I quite admit that the principle has been affirmed, but as the Honorable Mr. Richey said in moving the second reading, that my proposals might be considered subsequently, I did not bring them forward at that stage. It is therefore quite open to the Council to deal with them now. On the merits I adhere to the view I have already expressed."

The amendment was lost—

Section 28 of the Bill was drafted as follows:—

OF THE DISQUALIFICATION FOR THE PATELS OFFICE.

What persons are to be deemed disqualified for office. 28. The following persons shall be deemed to be disqualified for the patel's office (namely):

- (a) females ;
- (b) persons under eighteen years of age ;
- (c) *any person who has not passed such educational test, if any, as Government think fit, from time to time, to prescribe in this behalf ;*
- (d) any person who has attained fiftyfive years of age, except when such person's appointment or further continuance in office is specially permitted by the Collector ;

Note 34—Section 28 clause c--

'The following persons shall be deemed to be disqualified for the patel's office viz—(c) any person who has not passed such education atleast if any as Government thinks fit from, time to time to prescribe in this behalf.

- (e) any person who is of unsound mind or an idiot, or is, in the opinion of the Collector, by reason of disease or deformity, physically unfit for office ;
- (f) any person who is adjudged by the Collector, after a summary inquiry, to be of general bad character ;
- (g) any person removed from office under section 29, except when such person's re-employment is expressly sanctioned by Government.

Any officiator who during his term of office becomes disqualified for any of the above reasons shall cease to officiate.

The Honorable Mr. Telang moved an amendment to omit clause (c) of Section 28 and said—"I am rather sorry to have to move this amendment, for it is one not of a sort with which I can ordinarily sympathise. But it seems to me that when a person is pronounced disqualified in consequence of not having passed such an educational test as Government may think fit to lay down, a disqualification is set up about which we should be very chary, interfering as it does with hereditary right. When I was serving on the Education Commission some five years ago, I had an idea that something of this kind might be done. My colleague, Mr. Lee Warner and I had a conversation about it and we both were of opinion that something in this direction might be attempted, provided it did not interfere with hereditary rights. So it seems to me that although an educational test should be imposed it is premature to introduce it at the present stage". After some debate Mr. Telang again said "I should have no objection to the educational test being enforced if sufficiently long notice of the proposed amendment were given, say ten years. What I wish to guard against is the chance of these people being disqualified by legislation without having had sufficient notice that something more will be insisted on in future than has been in the past. I shall be quite content to withdraw the amendment if I am told no immediate enforcement of this clause will be attempted. I do not wish to limit Government to this or that period. I shall be content if notice of some reasonable period of years is given. But not to give such notice would interfere unfairly with what we are dealing with here as a valuable right." Lord Reay said

that he was afraid the undertaking could not be given for there were certain measures which could not be delayed, measures which were very urgent, such as that relating to sanitation. To have them properly administered there must be local administrators capable of carrying out the provisions of these Acts. The public could not be neglected because hereditary officers had not received sufficient education. Mr. Telang then replied.

“The public at large should be made to pay for special officers for these purposes. I am one individual who would be taxed for such a purpose, and I am quite prepared to submit to this rather than that hereditary rights should be interfered with and the pledges given by the state prejudiced in any way. The immediate enforcement of such a rule as is proposed would be regarded by the Matadar’s as interference with such pledges.”

The amendment was lost.

The Section 29 para 2 of the bill was as follows.

Of Officiators by suspension or removal from office. If an officiator shall be accused of any *misconduct* which shall seem to the Collector to require a severer punishment than that aforesaid, the Collector may suspend him from office during investigation into such accusation, and, after holding a summary inquiry, may, if he consider the officiator guilty of *misconduct* meriting such punishment, suspend him from office for a further period not exceeding six months, or, if *fraud or wilful framing of incorrect records or other grave misconduct or offence is proved against him, may, with the previous sanction of Government, remove him from office.*

Mr. Telang moved the following amendments:—“Before ‘misconduct’ add ‘departmental’ and for words ‘or if fraud &ca,’ substitute the following:—“If an officiator shall be accused of any criminal offence the Collector may suspend him from office, and in the event of the officiator’s conviction before a criminal court—such conviction not being reversed or quashed the Collector may remove him from office.”

“The only question is whether it should not be as difficult to prove an offence against a man before the Governor in Council as before the regular Criminal Courts. Provisions of this character withdrawing from the established tribunals matters

which properly fall within their functions, form a feature of recent legislation not here only but elsewhere, and I shall not allow myself to be a party to them."

The amendment was lost.

Mr. Telang moved to omit a portion of the bill the effect of which would be that the representative Matadar would have to suffer for the offence of others-and said. "The effect of this clause would be to make the representative Matadar suffer for the offences of others. He should of course suffer for his own crimes; but I cannot see how it can be just for him to be made to suffer for his deputy's offences. The matter has been discussed before, and I do not wish to occupy the time of the Council by going again over the whole ground. I did not hear arguments in favour of the clause when it was discussed in the Council Chamber though I read them afterwards in the report. As regards one of the arguments then urged I would beg to point out that concealing evidence would be a dereliction of duty and would render the offender liable to dismissal and to further punishment. As to another of the arguments adduced I may say that I do not charge Government with having misused their powers or being likely to do so. But I am against vesting Government with such powers. I may add that the unfairness of this provision becomes particularly remarkable in view of the section which the Council has passed authorizing the Collector to keep a deputy in office against the wishes of the representative matadar."

The amendment was lost.

### GUJRATI TALUKDAR'S BILL.

The speech of the Hon Mr. Telang on the second reading of the Gujrati Talukdar's Bill of 1885.

"Your Excellency. If I may be allowed I would like to say a few words before the matter is put to the Council. I suggested in the Select Committee that the Bill, instead of saying such

and such sections of the Land Revenue Code are applicable to Talukdars, should take a different line and should prescribe the particular sections which are applicable. I made that suggestion because when I read the Land Revenue code with special reference to talukdars I thought the Code was not as a whole an appropriate enactment for them, and was not intended, in fact, to be applicable to them. However as my colleagues did not think that course was advisable, I went through the sections of the Code and made suggestions, some of which were accepted, and some negatived. As regards some of these sections I was not satisfied with the view of the majority of the Select Committee and on some of them I find my views practically repeated in this memorandum. It is perhaps hardly possible at this time to so amend the Bill as will bring it more in consonance with the views expressed in the memorandum. So I will only say that I hope the talukdar's will hereafter find as little cause to know the contents of Land Revenue Code as they have found hitherto. Only I am not prepared to agree in the view as to the objections of these gentlemen being unreasonable or unfounded. I think there is always fair occasion for alarm in these cases. I feel it would be useless at this stage of the Bill to bring forward the views I take upon the subject. I don't want to say much upon any other portion of the Bill at the present stage. As to one or two matters I have given notice of amendment. It will, however be more proper that I should refer to them when I bring forward the amendments. I should, however, like to say a word with regard to section 15 which provides that "the procedure to be observed by the Talukdari Settlement officer or other officer aforesaid in any such inquiry shall be that laid down by the Code of Civil Procedure, 1882, for the trial of original suits". I suggested in the Select Committee that this provision should be altered, and that whenever questions of title arose the Talukdari Settlement officer, should be bound to refer the investigation to the regular tribunals. The Talukdari Settlement officer is not necessarily an

officer trained to judicial investigations, and although section 16, by providing for an appeal from him to District Court may be supposed to do all that is necessary in the matter to secure justice I am not quite satisfied on that point, as although an appeal may be provided for, a good deal often must turn on the manner in which a case is tried in the Court of first instance. My suggestion however, did not find favor with the majority of the Select Committee and also on one or two other points, I have somewhat reluctantly and doubtingly yielded to the views of the majority. Upon the points, however, to which my proposed amendments refer, and which I feel some what more strongly, I shall ask the Council to change the text of the Bill as settled by the Select Committee."

The Honorable Mr. Telang moved that to section 16, the following be added.

"Section 16. Add (3)—A second appeal shall lie from the decision of the District Court to the High Court in accordance with the provisions of the Code of Civil Procedure 1882."

and said—"Your Excellency. Having looked into this matter I am inclined to think that under the law as it stands an appeal to the High Court will lie, but I think it desirable to have such a clause as I now propose distinctly inserted in order that the people interested may know that such an appeal exists.

It having been explained that the Council has no power to directly interfere with the jurisdiction of the High Court by adding to its jurisdiction or limiting its jurisdiction the Honorable Mr. Telang withdrew his amendment, saying "yes, I think so too, as I have said already, and rather than take the risk of doing what may be, *ultra vires* of this Council, I ask your Excellency's leave to withdraw the amendment."

Note 34—Section 16—An appeal shall lie from any decision, or from any part of a decision, passed under the last preceding Section by the Talukdari Settlement officer or other officer aforesaid to the District Court, as if such decision were a decree of court from whose decisions the District Court is authorized to hear appeals. (2) upon such appeal being made the District Court may issue a precept to the Talukdari Settlement officer or other officer aforesaid, requiring him to stay the partition pending the decision of the appeal.

The Honorable Mr. Telang moved the following amendment to the law proposed to give the Collector power to manage Talukdari estates in certain contingencies—"When any estate is so attached and taken under management it shall be lawful for the talukdar to apply to the District Court by petition for the restoration of the management of such estate to him and the District Court shall, after hearing evidence make an order for such restoration, unless it is satisfied that there is reason to apprehend danger to the peace of the country or injury to the well-being of the inferior holders in the event of such restoration being ordered."

And said—"Your Excellency—This is one of the sections about which I have said in signing the report of the Select Committee that I would take objection in Council, not being able to reconcile myself to the views of Sir James Peile and the Honorable Mr. Richey—as the first portion of the section deals with matters that may endanger the peace of the country and must therefore be dealt with by the Executive Government on its own responsibility, I am content to leave that part alone. But the latter part of the section provides that—

"When any estate is so attached and taken under management, the management thereof shall not be restored to the Talukdar until it is shown, to the satisfaction of the Governor in Council, that no reason for any such apprehension as aforesaid any longer exists,"

"The clause as it stands would have no real effect whatever, for the Talukdar would never be in a position to claim restitution under it. We know that when such charges are made against him as are contemplated in this provision, it will be a—great undertaking for him to convince the Governor in Council that any such 'reasonable apprehension' no longer exists. I believe the clause I propose will meet the just requirements of the case. Under that clause the matter will be discussed in open court and the procedure strictly in accordance with the usual course. It does not seem to me right that the authority which orders



sequestration as a measure of executive administration should also—judicially decide as to the restoration. Besides I think the onus of proof should be thrown upon the former authority and the land should be restored unless that authority can show reason why it should not. I cannot concur in the view, that because the sequestration will be ordered by so high an authority as the Governor in Council therefore when it comes to be judicially investigated, the landowner should have the burden thrown on him of showing that his rights of property have been improperly interfered with.”

The Honorable Mr. Richey then thinking it necessary “to give a man an easy course of judicial procedure, drafted a clause to the following effect which Mr. Telang accepted. “When estate is so attached and taken under management the sharers or any one or more of the sharers therein may at any time apply to the District Magistrate to restore the management thereof; and if the applicants shall prove to the satisfaction of the District Magistrate that no reason for any such apprehension as aforesaid any longer exists, the District Magistrate may order restoration of the management to be made to the Talukdar.”

The Honorable Mr. Telang moved to lay down that when the estate ceases to be under the management of Government officers the possession and enjoyment thereof should revert to the Talukdar, subject only to such agreements as shall have been made in conformity with the provisions of section 28<sup>35</sup> of the Gijrat Talukdars Act and said, “Your Excellency. The result of this section as it stands would be that during the period of temporary management the old tenants-at-will may be converted into holders with occupancy rights as against the Talukdars, and this is neither desirable nor just. Under Section 28 the provision is this that no agreement entered into by a Government officer

*Note* 35, Section 28—relates to the powers, to take up management of estates at Talukdar's request.

managing an estate under Section 26<sup>36</sup> in respect of any land in such estate shall be for a period exceeding five years from the date thereof and that no such agreement by a Government

Officer managing an estate under Section 27<sup>37</sup> shall have effect beyond the end of the revenue year in which such officer's management determines, unless the same is ratified by the cosharer to whose share the said land is finally allotted when the partition of the estate is completed. That seems to me to be quite sufficient. The words as they stand in the Bill before us seem to cover some what larger field than will be included in the words I have suggested, and I think we ought to limit in the mode I have suggested."

## GAMBLING ACT.

On Bill No. 2 of 1887 was brought in the Council on the 10 October 1887. The Honorable Mr. Telang expressed as follows.

"I am informed that people of the same class as those who were described by the mover of this Bill have been exercising their wits to find out how to frustrate the working of the Act when passed, and one of the ways which seems to have suggested itself to their ingenuity is that they might go into Bombay harbour and play in boats. I do not know whether this Bill would cover gambling in such places. But I presume that inside the limit of 3 miles from the coast they would come under the Act. If not, the Council should expressly legislate for such offences. If these

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*Note 36.* Section 26—gives powers to Collectors to manage Talukdari estates in certain emergencies.

*Note 37.* Section 27—relates to power to take up management of estate pending partition.

were included in the Bill, it would prevent this particular mode<sup>88</sup> of running a coach and four through the Act when passed."

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### MISCELLANEOUS.

The Bombay Legislative Council met at Poona on 10th October 1887 and since the last meeting the Council had lost two of its members,—the Honorable Sir Maxwell Melvill and the Honorable Mr. Dayaram Jethmal. His Excellency the Governor having expressed his sorrow for the sad occurrences, the Honorable Mr. Telang spoke as follows.

"On behalf of the additional members of the Council I would like to express our concurrence in what has fallen from Your Excellency. It is not necessary to add anything to what Your Excellency has said but we desire to express our sympathy with the relatives of the deceased members of this council whose death we lament."

*Note.* 38 This Bill was brought to remove the limitation imposed by Bombay Gambling Act 3 of 1866 in consequence of which gambling could not be put down in towns which were more than 3 miles distant from a railway station unless they contained 5,000 inhabitants and a resident Magistrate. The result was that some people carried on gambling within a few miles of Bombay which the authorities were powerless to check. They went beyond 3 miles from railway station places, which contained less than 5000 inhabitants with no resident magistrate.







